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Supreme Court, U.S.
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IN THE

SUPREME COURT OF THE UNITED STATES

Deanna C. Willson - PETITIONER

v.

Catholic Charities Adoption Agency and M. Bauer,
Appellees - RESPONDENTS

ON PETITION FOR A WRIT OF CERTIORARI TO

KANSAS COURT OF APPEALS

PETITION FOR WRIT OF CERTIORARI

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85 pp

QUESTIONS PRESENTED

SHOULD IT BE LEGAL TO TAKE AN IRREVOCABLE ADOPTION CONSENT FROM A MOTHER WHILE SHE HAS POTENT NARCOTICS IN HER SYSTEM? IS THE EQUAL PROTECTION PROVISION OF THE UNITED STATES CONSTITUTION VIOLATED WHEN A MOTHER WHO WAS IMPAIRED HAS TO PROVE HER IMPAIRMENT WHICH IS IMPOSSIBLE, WHERE AN INTOXICATED DRIVER HAS A BREATHALIZER TEST TO PROTECT HIS/HER RIGHTS?

WAS EQUAL PROTECTION GIVEN TO ME WHEN IN 40+ STATES MY BABY WOULD HAVE BEEN RETURNED TO ME BECAUSE A MAJORITY OF STATES HAVE LONGER WAITING PERIODS AND/OR GRACE PERIODS FOR REVOCATION FOR ANY REASON?

WAS EQUAL PROTECTION GIVEN TO ME WHEN A JUDGE IN TOPEKA, KANSAS RETURNED A BABY TO HER NATURAL MOTHER BECAUSE THE MOTHER WAS ON ILLEGAL DRUGS WHILE I WAS ON PRESCRIBED OPIATE NARCOTICS?

IS UNITED STATES SUPREME COURT ACTION NEEDED WHEN A LAW IS IGNORED BY THE STATE COURTS WHEN CASE LAW EVEN SUPPORTS THE LAW? IS IT FAIR TO CHANGE THE LAW AS THEY WISH TO SUPPORT AN ADOPTION ATTORNEY?

IS IT NOW TIME FOR THE UNITED STATES SUPREME COURT TO REVIEW COERCION AND ABUSE OF MOTHERS TO GET AN INFANT FOR A PAYING COUPLE? IS ADOPTION LAW ABUSE IN KANSAS SO BAD THAT THE UNITED NATIONS HAS FORMED A 1503 COMMITTEE TO INVESTIGATE AND TAKE OVER CASES THAT WERE REFUSED TO BE HEARD? THE COMMITTEE TOO OVER ON MAY 24,2002 AND THE REPORT TO THE UN 1503 COMMITTEE INCLUDED 9 SPECIFIC CASE EXAMPLES, OF WHICH SIX CAME FROM THE STATE OF KANSAS.

TABLE OF CONTENTS

Constitutional and Statutory Provisions Involved.....pg. (iv)
Statement of the Case 1
Reasons for Granting the Writ..... 17
Conclusion..... 22

INDEX TO APPENDICES

APPENDIX A .....pg. 24.....Memorandum Opinion Kansas Court of Appeals (Unpublished) April 5, 2002

Appendix (a).....pg. 47 ..... Transcript Statement of Social Worker Admitting Not Giving a Copy Due to Attorney Advice

APPENDIX B.....pg. 48..... Journal Entry of Judgement District Ct. Sedgwick Co. Kansas Written by Opposing Attorney

APPENDIX C.....pg. 57..... Denial - Petition for Review Kansas Supreme Ct.

APPENDIX D.....pg. 58..... Motion By Appellant About Improper Behavior of Attorney

APPENDIX E.....pg. 60.....Affidavit of Adoption Expert About Unethical Handling of Obtaining Signature

APPENDIX F.....pg. 68.....Transcripts of Proof of Intoxication, no sleep, etc.

TABLE OF AUTHORITIES CITED

CASES	PAGES
Troxel v. Granville, 530 U.S.	17
In re Baby Boy N,19 KA 2d 574(1994) ..... 874(1994)	2, 22
Wilson vs. Kansas Children's Home ..... 159 Kan.325,329-30 154p2d 137(1994)	2
In re Adoption of AMM and ANN..... no 79,034 Ks Appellate Ct	3
Scarpetta v. Spence-Chapin Adoption, 28..... N.Y.2d184(1971)321 N.Y.S. 14 2d 65, 269N.E.2d 787	12, 19
Adoption of Baby Girl H.	18
Stanley V. Illinois.....	13, 14
Treiber Vs. Strong 5 Kan App. 2nd 392, ... 617p.2d114(1986)	10
In the Matter of Sarah K.....	11, 19
In Matter of Male Infant L 61 N.Y. 2d 420, ... 429 supra	12
In re Baby T. Ks Appeals Court March 2000.....	7
In re Adoption of JAB, 26 Kan. App..... 2d 959,965,997 p2.d 98 (2000)	7
Drummond vs. Hopper, 4 Del (4 Harr)327; Hymen&Moore, 48 nc 416	

Brady vs. U.S., 397 U.S. 742, 748..... 15
Miranda vs. Arizona U.S. 436,444 15
In re Adoption of Irons,235 Kan.540,547,..... 8,10
684p.2d332(1984)

STATUTES AND RULES

K.S.A. 59-2124 (a) relinquishment 2, 21
K.S.A. 59-2114 (a) consent..... 21
K.S.A. 50-626..... 9
K.S.A, 50-640(b)(1)..... 8
K.S.A. 2116..... 21

OTHERS

Facts and Comparisons Drug Information Book..... 6
Physicians Desk Reference 6
NAIC (National Adoption Information..... 9
Clearing House)
Am Jurisprudence 41 2d p612-613..... 8

Fifth National Conference On Open
Adoption in Michigan Appendix
Child Welfare League of American
Standard of Excellence in Adoption Appendix
"The Primal Wound" by Nancy Verrier
"Ethics in Adoption" by Ann Babb
All other States Adoption Laws..... 13, 14

STATEMENT OF THE CASE

1. **Acceptance of Relinquishment Law Not Followed**

The legislature provided an extremely specific statute governing relinquishment of a child to an agency in that it must be accepted in writing by the agency to be effective. The District Court Judge and the Appellate Courts have both ignored the law. This fact of law was even pointed out by the agency social worker in testimony. Kathy Van Zelfdin the adoption facilitator for the agency stated in testimony that: " I explained to her that she could receive a copy of this. I explained that our executive director would need to sign off as acceptance." This led to confusion of the finality of the signing because Catholic Charities did not follow the law specific to relinquishments. Both Courts have misinterpreted the law by confusing the law regarding consents and relinquishments. While still under the influence of two of the most potent narcotics, I signed under pressure a relinquishment on December 22, 2000. On December 23, 2000 I contacted Catholic Charities by phone and advised that I did not want to proceed with the adoption, that I wanted to withdraw my relinquishment and that I wanted my baby returned. Also, on December 23, 2000 I contacted Sara Burenheide, who has physical custody of my daughter and told her the same. I

also contacted the attorney M. Bauer who also knew my position. On December 26, 2000 I sent a certified letter to Catholic Charities informing them that I wished to revoke the invalid form. This letter was signed for by the agency on December 28, 2000. K.S.A. 59-2124 (a) provides that: Any parent or person in loco parentis may relinquish a child to an agency, **and if the agency accepts the relinquishment in writing,** the agency shall stand in loco parentis to the child and shall have and possess over the child all rights of a parent or legal guardian, including the power to place the child for adoption and give consent thereto.

Catholic Charities did not accept this relinquishment until January 3, 2001, almost 2 weeks after I had revoked the relinquishment. The relinquishment of a child to an agency for adoption must be accepted in writing by that agency to be effective. **In re Baby Boy N**, 19 KA 2d 574 (1994) 874 p 2d 680. K.S.A. 1993 Supp. 59-2124 is a statute which authorizes divestiture of parent's rights and it must be construed in favor of maintaining those rights. ***Wilson Vs. Kansas Children's' Home***, 159 Kan. 325, 329-30, 154 p.2d 137(1944). Wilson dealt with a statute similar to the one now under consideration. The statute authorized relinquishment of parental rights if the form was executed by the parent and accepted by the agency. In Wilson, the mother signed the relinquishment form, but there was no evidence

that custody or control of the child was ever accepted by the adoption home or agency. The mother filed a writ of habeas corpus seeking custody of her children and it was granted since her relinquishment had never been accepted as required by law. In my case I never received a copy of the relinquishment form that I signed until February through my counsel. This was deceitfully withheld by the agency under attorney advice until they could get it accepted since the director was not there. The social worker from the agency in testimony when asked why she did not give me a copy replied: " I did not know legally what I was supposed to do", even though the relinquishment form says right on it that "you are to receive a copy of this".

The Appellate Court in its written decision erred by inaccurately stating that I got a copy on December 28, 2000. This never happened and there is no evidence unless it was fabricated later. I demand to know how this was perceived or if it was just an error. Also I pointed out that the attorney for the appellees even lied in his brief on page 38 by stating that Catholic Charities both accepted the it in writing and took legal custody and then facilitated the placement of the child in the adoptive home. This is fraud and he should be reprimanded for it. I believe there is a rule that briefs must be accurate. He tried covering up that the agency did not follow the law.

In the case of **re Adoption of AMM and ANN** case No. 79, 034, Kansas Court of Appeals

where the law again was ignored. But the Court recognized it and rightfully returned the twins to the natural parents. The appellees whom M. Bauer represented asked the court to adopt a "best interests" of the child argument to counter breaking the law. It declined and said: "As the Maryland Court of Appeals stated: It needs to be asked whether it is really good to make an exception of each case on "the best interest of the child". It would not take many dismissals of adoption petitions and removal of children from homes in violation of placement laws to stop efforts of evasion. They continue because failure to enforce the law encourages others to do likewise." Neither the Appeals Court nor the Appellees had any cases supporting that the acceptance could be put off for weeks while the mother begged for her baby back. However, I had two to support mine. Also, at the time of signing this was told to me that it had to be accepted yet by the social worker.

The Appellate Court confused consent with relinquishment. In their decision they said that the statute does not require the signature of the mother and agency simultaneously as I seemed to suggest. However, it does. I have researched other states and agencies do have them accepted right after the mother signs to meet the law. They further say that the principles of common–law contracts does not apply. However, a constitutionally protected right should have at least that. A person purchasing encyclopedias

has greater protection than a mother who has an agency and attorneys making money off of her baby. Since adoption attorneys live in mansions off the money, then it very well should be. Kansas offers little protection to the vulnerable mother considering adoption. What is even really backwards is that the Judiciary Council of 1990 even admits that they do not care if birthmothers' rights are trampled on. It even recognizes that not all consents are going to be voluntary and in Kansas it is impossible to prove due the biased influence of the adoption industry.

II. The State of Kansas Allows Consents and Relinquishments to be Taken From a Recovering Mother while on Narcotics

This should be illegal to do this since most mothers are still under the influence of narcotics from epidurals and post-op narcotics as I was. Fentanyl was the drug in my epidural, which is 10 times more potent than morphine. It has a half-life of a minimum 3 hours (range 3-7). It takes 5 to 5.5 times the half-life for the drug to be eliminated from the system. This means that Fentanyl is still in the system at 12 hours, which is the legal time to get a signature. This is ludicrous. In fact Fentanyl could still be there at 35 hours after. In addition to the Fentanyl in the epidural, Percocet was given. The day before signing I was given a total of 9 tablets of Percocet. On the day of signing, I took 5 tablets of Percocet including a dose less than 4 hours before signing. This drug peaks at one hour and lasts for 4 to 6 hours. It has a half-life of 4 to 8 hours (vol. 22 p. 14), which means that at a minimum, more than half of the drug was in my system a signing. To allow consents when Kansas does is like stealing a baby from a mother when she is drugged up. The waiting time in most states is 72 hours because they acknowledge what Kansas does not. Nebraska even waits at least 48 hours and agencies wait until the mother is off drugs and out of the hospital. The ethical practice of adoption is to never take a consent in the hospital. So my case

has set precedence that it is okay. The mother must prove her state of mind if she even recalls. The law is designed to secure the adoption no matter what. If a mother is on drugs, then she is given the impossible task of proving her state of mind. A drunk driver has his/her rights more protected than a mother in a hospital when pressured to severe the most important bond of mother and child that is irreplaceable. For at least a drunk driver gets a Breathalyzer test. The birthmother gets the guess of a biased social worker or attorney. This is unconstitutional. I find it contradictory to read in ***re Baby T*** Ks Court of Appeals March 2000 that: " We conclude the legislatures intent was to protect the birthmother from being coerced into signing a consent while under the influence of pain or pain-inhibiting medications, while balancing..." when in my case there was evidence of impairment but it was ignored. Regarding the drug issue, the Kansas Court of Appeals cited a case that was ridiculously not comparable to mine. After looking up this case, In ***re Adoption of J.A.B.***, 26 Kan. App. 2d 959, 965, 997 p. 2d 98(2000), I couldn't believe it. First of all this was not about a mother losing her infant. This was a paternal grandfather arguing that since the woman was in a drug treatment program for illegal drugs, not on prescription drugs in a hospital bed, he wanted to prevent the stepfather from adopting the 11-year-old boy. I find this case insulting to what my argument was about. I know of a case handled by

a Topeka attorney, Mark Works, where the baby was returned though because the birthmother was on drugs.

In the Am. Jurisprudence 41 2d p612-613 it states: the effect of indulgence in the use of potent narcotics such as opium and its derivatives, is similar to intoxication produced through imbibing alcoholic beverages at least in respect of mental stability and the power to reason. Thus a deed executed by a person while under the effect of anodynes, in the form of morphine will be set aside. There is also authority that a contract is void entered into by an intoxicated person (Drummond vs. Hopper, 4Del(4 Harr) 327; Hymen and moore, 48 nc 41.

In the case referred by the Appeals Court *In re Adoption of Irons*, 235 Kan. 540, 547, 684 p.2d 332 (1984), a consent (I signed a relinquishment) is not an ordinary contract, but one that requires thoughtful consideration on the birth mother's part. This statement to me or any reasonable prudent person means that this contract must be granted greater protection especially to the one whose Constitutionally protected right is at stake. However, it is treated much less than an ordinary contract, at least at the birthmother's end. In door-to-door sales, a consumer has three business days to cancel. K.S.A. 50-640 (a) subsection (c)(1)(C).

K.S.A. 50-640 (b)(1) states, "in connection with any door-to door sale made within this state,

it constitutes an unfair and deceptive act or practice within the meaning if K.S.A. 50-626, and a amendments thereto, for any supplier to: fail to furnish the consumer with a fully completed receipt or copy of any contract to such a sale at the time if its execution". While Kansas's consumer law allows individuals 3 days to revoke consent due to pressure of making a sale (or making a couple their dream), and MOST states provide at least that much protection to natural parents, Kansas does not provide even humane protection to natural parents in adoptions. This state must acknowledge and treat adoption as the 1.4 billion dollar industry it has become. According to A. Thurston of the National Adoption Clearinghouse in Washington D.C., the average private adoption costs $60,000. Because there are so many unnecessary, coerced adoptions in Kansas, this is going to create confusion and bitterness in the lives of these children who will want to know the truth. What a horrible truth to find out what their natural mother's/father's went through. Only if Kansas protected birthmothers from being pressured and harassed in a hospital bed would this rate not be so high. Baby T did not need a mother. She has one that fought the unfair laws as well.

Kansas' adoption law regarding taking consent is designed to benefit adoptive parents and the self-serving interests of adoption attorneys who have helped get these laws designed this way. The argument that a newborn

needs the stability of strangers after it has been with its mother for nine months is absurd. Some babies stay in the hospital for weeks in the hands of nurses before the mother has the baby most of the time. The "mere whim" argument is futile when a mother calls off narcotics the next day for her baby. The decision needs to be a clear-headed decision, after birth, off narcotics, and in front of a disinterested party, who can attest to this. A mother such as I, who nourished my healthy daughter and paid for all of the pre-natal and hospital expenses should.

A consent to an adoption is a contract between the birth parent and the adoptive parents. Treiber v. Strong, 5 Kan. App. 2nd 392, 617 p.2d 114 (1986)(Pet.) For review denied 228 Kan.807). This is not a typical contract as noted in In re Adoption of Irons, 235 Kan.540, 684 p2.d 332 (1984). The Court stated that when a birthparent gives a consent there are legitimate expectations on the part of the prospective adoptive parents and those expectations should not be overturned on a mere whim. There must be thoughtful consideration on the part of the birth parent in making the decision to allow an adoption. Since DW was undecided up to the minute of signing, she could not have been provided a suitable environment to make a thoughtful decision. A thoughtful decision should require that the birthmother is free from potent narcotics when processing a life-altering decision. Furthermore, DW begged for her daughter back

the next day when the potential adoptive parents had the baby less than 24 hours. This is nowhere close to a mere whim. DW was away from undue influence of the social workers and free from medication in her system. This was when DW made her decision. In fact, DW would have had her baby back in her arms in 41 other states she acted so quickly. In fact, most states require 72 hours before a consent can be signed so they will not be signing under the influence of drugs and the pressure of the social workers. This was a decision DW made with no influence around her and off medications. A natural parent's desire to the "companionship, care, custody, and management of his or her children " is an interest far more precious than any property right (Lassiter vs. Dept. of Soc. Services, 452 U.S. 18, 27, quoting from Stanley v Illinois, 405 U.S. 645, 651). It follows that when the State establishes a mechanism to terminate familial bonds, it must provide the parents with fundamentally fair procedures (Santosky v. Kramer, 455 U.S. 745, supra). Given DW testified and the adoptive mother testified that DW pleaded that a mistake was made, the quick action taken by DW should be looked at. Even if it was a simple "change of mind" like the opposing attorney, courts have even given changes of mind importance. In the Matter of Sarah K., 110 A.D.2d 18 the appellate court pointed out " a change of mind is to be accorded great sympathy, and in a proper case, encouragement and favorable action

especially where the natural parent has sought return within a very short time" (Matter of Male Infant L. 61 N.Y. 2d 420, 429 supra). Again since the appellate court must look at the special circumstances of each case this was not a mere whim that DW begged for her baby back, it was when she was no longer had undue influence of the drugs and the social workers that DS, JB, and DW testified. Due process requires that DW's baby should be returned to her arms.

In Scarpetta v. Spence –Chapin Adoption, 28 N.Y. 2d 185 (1971) 321 N.Y.S.2d 65, 269 N.E.2d 787, New York Court of Appeals stated,

"It has been well said that the Status of a natural parent is so important, that in determining the best interests of the child, it may counterbalance, even outweigh, superior material and cultural advantages which may be afforded by adoptive parents. For experience teaches that a mother's love is one factor which will endure after other claimed material advantages and emotional attachments may have proven transient." (Peole ex rel. Gramant v. Free Synagogue Child Adoption Committee, supra at pp.337-338). In addition, indeed, as recently as 1963, the legislature expressed its approval of this 'decisional rule that between a parent and a non-parent, the parent is preferred.' (Report of Joint Legislative Committee on Matrimonial and Family Laws, N.Y. Legis Doc., 1963, No 34, p91.) page 193.

It is well established that the interest of the

parent involved in the termination of his or her parental rights are of primary constitutional importance. ***Stanley v. Illinois***, 405 U.S. 645, 651, 92 S. Ct. 1208,1212-13, 31L. Ed.2d 551,558(1972)(acknowledging the "essential" and "basic civil" **constitutional rights of parents, rights which are "far more precious...than property rights" and which "undeniably warrant deference and, absent a powerful countervailing interest, protection.").** *In Termination of Parent-Child Relationship of Infant Ellis, a Child and T. Ellis the natural the Matter of mother V. Catholic Charities*, the Court of Appeals has recognized that the "parent-child relationship is an important liberty interest in which the state cannot interfere without providing the parents fundamentally fair procedures." The United States Supreme Court likewise held that "parental status termination is irretrievably destructive of the most fundamental family relationship."M.L.B. v S.L.J. U.S., 117 S.CT. 555,566,136 L.Ed.2d 473,491 (1996). "(fn10) And, in our later decision in People ex. Rel. Anonymous v. Anonymous (supra, at p. 335), we wrote in like fashion, that 'where the contest for the custody of a child is between parent and non-parent, the primacy of parental rights may not be ignored'"

When a birthmother is signing a relinquishment of a liberty protected interest of the U.S. Constitution it should be in a clear state of mind like the Michigan courts and many others require. In Michigan, it must be signed in front of

a judge and the judge asks and requires that the birthmother is free of any medication before signing. CA requires 30 days before a consent can be taken. (Fame Code 8814.5), Colorado must petition the court (19-5-103), District of Columbia does not allow a consent to be taken until 72 hours after birth (16-1007(b)) and allows another 10 days for revocation for any reason, (16-1007(c)), in Georgia a parent may revoke at will within 10 days and the contract is not valid if it does not say this, (19-8-5, 19-8-9), Illinois requires a 72 hour wait and an additional for revocation for any reason, 750 IL CS 5019), Iowa requires a 72-hour wait and then 96 hours to revoke, (600A.4), Kentucky requires 72 hours and 20 days after to revoke(199.500), Louisiana requires a five day waiting period after birth to sign a consent, 9CH.Code Art 112(b)(1):1130), Maine allows 3 days for revocation, Maryland allows a mother 30 days to revoke her consent at will (Fam. Law 5-311), Massachusetts requires 4 days before taking consents, Minnesota requires 72 hours and 10 days for revocation for any reason, Missouri says a consent may be revoked any time prior to review before a judge.

Nevada (127.070), New Hampshire (170-B: 7), New Jersey (9:3-41(e)), Montana (42-2-408), Mississippi (93-17-5), Arizona (8-107(B), Ohio (3107.08(A), Pennsylvania (23Pa2711), all require a wait of 72 hours after birth before allowing a birthmother to sign. Oklahoma (10-7503-2.2&10-7503-2.3), allows a mother to

revoke consent for any reason within 15 days if her consent was not taken before a judge (10-7503-2). North Carolina allows 21 days for revocation. New York does not allow revocation if consent is given in court, but grants 45 days to revoke at will if the consent is not taken in front of a judge, (Dom.Rel. Law 115-B), recognizing the high potential for fraud in adoptions. Michigan does not permit the signing of consent to adoption until after an investigation and a judge has explained their rights to the parents. Rhode Island requires a wait of 15 days after birth before signing. Australia requires 30 days and Ireland requires a long wait.

In all the testimony, DW was never decided. In the social worker's notes the day of the signing, in DS's testimony, in JB's testimony, and in the notes of SK and SW the nurses who took care of DW it is clear that DW was undecided.

A waiver is the "intentional relinquishment of a known right with both knowledge of its existence and an intention to relinquish it"(Werking v. Amity Estates, 2N.Y. 2d 43, 52 quoting from Whitney contracts (4th edition) p273. Where a personal liberty is involved, it is generally held that a waiver of due process rights must be voluntarily, knowingly, and intelligently made(Brady V. U.S., 397 U.S. 742, 748; Miranda vs. Arizona, 384 U.S. 436, 444. The standard for relinquishment of parental rights, also a

fundamental liberty interest, has been held by the same standard. My emotional, physical, and drug-induced condition was not an acceptable time to take a relinquishment from me. The consent was not free and voluntary if it was influenced by prescribed pain alleviating drugs. The fact that I demanded my baby the next day is very indicative of this as well as the evidence of blurry vision, drowsiness, etc. The relinquishment was not valid until 12 days after signing and no one had the right to keep my baby and I apart. Not only legally my baby should have been with me, but morally as well. There is no comparison to 9 months plus 2 days to the 1day that the adoptive parents had her. These circumstances mandated that the Kansas Supreme Court set aside this relinquishment and declare that taking a consent under the influence should be voided when it comes to relinquishing a liberty-protected interest of one's child.

REASONS FOR GRANTING THE PETITION

In the United States Supreme Court decision in Troxel v. Granville, 530 U.S., 147 L.Ed.2d 49, 120 S Ct. 2054(2000), the Court stated that the interests of parents in the care, custody, and control of their children is a constutional right guaranteed by the fourteenth Amendment. The court held that the due process clause of the Fourteenth Amendment protects a parent's right to make decisions concerning the care, custody, and control of their child. To deny a mother time enough for potent narcotic opiates to clear from her system and time to recover physically, a definite plot by desperate adoption attorneys, agencies, and potential waiting couple to coerce and pressure for the signature, is a violation of her Fourteenth Amendment rights. Furthermore, the mother then has the burden of proof to prove what her level of impairment was which is impossible even when under oath swears that she was. Again, a drunk driver has his/her rights more protected. I am asking that the United States Supreme Court put a stop to this atrocity going on right now. A humane waiting period of at least 72 hours after taking narcotics should be made law. Most states have at least that or have

a revocation period recognizing the high potential for fraud and coercion in adoption of newborns today. Consumers are more protected than a mother's liberty protected interest of her children. For the "Cooling off Law" give 72 hours to cancel and signed contract. K.S.A.50-640(a) subsection(c)(1)(C).

"In re Adoption of Baby Girl H," 12 Kan, App. 2d 233, 739 p2d 1 (1987), where a consent was given about 1 hour after the birth if a child was considered, the Court pointed out that K.S.A. 60-2801 provides that no release can be validly executed by an injured person within 15 days if the date of injury, and that an unmarried mother's decision to allow her child to be adopted deserve as much consideration.

K.S.A. 59-2116 was a response to the decision "In re Baby Girl H, which attempted to establish a 12 hour waiting period before a binding consent could be taken. "In Re Adoption if JHG" 254 Kansas 780. (1994) the court noted that the legislature used the term "voidable" in K.S.A. 1993 Supp. 59-2116 with the intent that a consent to adoption given by the natural mother within 12 hours after birth of a child is voidable not void. In that case the consent was taken at 4 hours after birth and the adoption was granted. Since that time, Kansas has had no waiting period for taking a binding consent.

The decision of the Kansas Courts would conflict with most other Appellate Courts. Most

states have either a 72-hour waiting period or a grace period. I demanded my baby back within 24 hours of signing. It had not even been accepted in writing by the agency until 2 weeks later which is required by state law to be effective. **In Matter Of Sarah K., 110 A.D. 2d 18 (2d Dept 1985)492 N.Y.S. 2d 957**, the New York Appellate Division stated: "The Court of Appeals have noted that "a change of mind is to be accorded great sympathy, and, in a proper case, encouragement and favorable action, esp. where the natural mother sought return within a very short time."

In Scarpetta v. Spence-Chapin Adoption, 28 N.Y. 2d 185 (1971) 321 N.Y.S. 2d **65, 269 N.E. 2d 787**, New York Court of Appeals stated,

"It has been well said that 'the status if a natural parent' is so important 'that in determining the best interests if the child, it may counterbalance, even outweigh, superior material and cultural advantages which may be afforded by the adopters. For experience teaches that a mother's love is one factor which will endure after other claimed material advantages and emotional attachments may been proven transient.' (People ex relGrament v Free Synagogue Child Adoption Committee, supra, at pp. 337-338).

A suggested, but non-required waiting period of only 12 hours after birth before taking

an irrevocable consent to adoption while still having powerful narcotics in a mothers system should be illegal and addressed by the United States Supreme Court. After my case has been heard, it is widely practiced and many mothers are aching for their babies. In Re Adoption of Baby Girl Taylor, U.S. Supreme Court case 01-5855 which was denied hearing, the attorney was at the hospital at 12 hours after birth. Tarin Taylor the mother of Baby Girl Taylor still had narcotics from her epi-dural in her system. The Appellate Court ruled against her saying that the legislature in coming up with 12 hours intended to protect the mother from signing on pain medications. Since the fact that she still had potent opiates in her system was not pointed out, I did in my case even citing what the KS Appellate Court said about the drug issue. How ignorant to say this when most mothers still have opiates in their system. I had a dose a few hours before I even signed. However, they ignored it again. The KS Appellate Court cited the most bogus case about the drug issue, which I will cite. The case was about a paternal grandfather not a mother in a hospital signing her a relinquishment. It was about a stepparent adoption of an 11-year-old child. The mother was not losing her right and the paternal father was deceased. The mother was not on **prescribed** narcotics for pain, she was in an illegal drug treatment program at the time of signing and the paternal grandfather tried using that to prevent the adoption by the

stepfather. In my case there is the medical notes of the narcotics I was taking and testimony from Dana that I was impaired and from one other person. The Court denied any of the evidence.

The Kansas Appellate Court also fraudulently changed the wording of what the law surrounding relinquishments actually says. In their decision on page 13, they say that: "The legislature has provided fairly specific statues to govern the process of relinquishment and adoption. **K.S.A.59-2114** provides:

"(a) Consent shall be in writing and shall be acknowledged before a judge of a court of record or before an officer authorized by law to take acknowledgements.... A consent is final when executed, unless the consenting party, prior to final decree of adoption, alleges and proves by clear and convincing evidence that the consent was not freely and voluntarily given. The burden of proof rests with the consenting party."

They left out what the law really says:

K.S.A. 59-2124 (a) provides that:

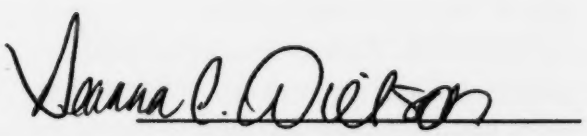
Any parent or person in loco parentis may relinquish a child to an agency, and if the agency accepts the relinquishment in writing, the agency shall stand in loco parentis to the child and shall have and possess over the child all rights of a parent or legal guardian, including the power to place the child for adoption and give consent thereto.

Catholic Chartities did not accept this relinquishment, and therefore custody of Baby Girl W until January 3, 2001, 12 days after I had revoked the relinquishment. The relinquishment of a baby to and agency for adoption must be accepted in writing by that agency in order to be effective. ***In re Baby Boy N***, 19 KA 2d 574 (1994).

Catholic charities had no legal right to withhold my baby from me after I communicated revocation of the relinquishment. Catholic Charities did not comply with K.S.A. 59-2124; therefore the State Courts at some level should have voided the relinquishment. However, all levels managed to "overlook" the law. These abuses by the Courts of mothers need to be recognized and stopped. I have met more than 20 mothers who have suffered this profound devastating loss. It is obvious that the Kansas Courts are too biased and cover up injustices being done.

My case provides you the opportunity to show the UN that despite the past decision to deny review for Tarin Taylor and Luke Armour, that you are now willing to address the matter of fraudulent and coercive adoption practices. My case is the second contested adoption case from the state of Kansas within the past year. The first case from Kansas rejected in October of 2001, resulted in the UN investigating with a 1503 committee formed. By January 2002, numerous

cases were pouring in to the UN on daily basis. This case has the potential for you to reverse some of those negative effects, by addressing the matter of child trafficking. The abuse by adoption attorneys and agencies supported by a biased corrupt Court system has created a whole new subpopulation of victims who have suffered loss and grief so deep and wrong, that we birthmothers are now the "slaves" of the billion dollar adoption industry. The National importance of granting this petition is to defend the Constitution addressing this issue. Unnecessarily separating babies from mothers creates harm for the child and the mother. These babies do not want to find out that they were indeed wanted, but were kidnapped by a corrupt adoption system. Adoption was legislated for orphans, which is what it should be for. Today, it is a multi-billion dollar industry to provide perfect infants to paying couples no matter how it is done. Please protect future mothers and give them a chance.



Deanna C. Willson

APPENDIX A

NOT DESIGNATED FOR PUBLICATION
No. 87,291
IN THE COURT OF APPEALS OF THE STATE OF KANSAS
In the Matter of the Adoption of Baby Girl W.
Memorandum Opinion

Appeal from Sedgwich District Court; MICHAEL CORRIGAN, judge. Opinion filed April 5, 2002. Affirmed.

Deanna C. Willson, appellant pro se.

Martin W. Bauer, of Martin, Pringle, Oliver, Wallace & Spikes, L.L.P. of Wichita, for the appellees.

Before PIERRON, P.J., JOHNSON, J., and BUCHELLE, S.J.

Per Curiam: Baby Girl W. was born on December 22, 2000. Two days later, the birth mother signed a form relinquishing her parental rights and consenting to the baby's adoption. The day after signing the documents she advised the adoptive parents that she had changed her mind and wanted the baby back. They refused and the birth mother filed a petition to set aside the relinquishment. The trail court found that the relinquishment had been freely and voluntarily signed and with full knowledge of its effect. The court denied the birth mother's request to set it aside.

An appellate court's role in reviewing a motion to revoke consent to adoption is to

determine whether the trial court's findings of fact and conclusions of law are supported by substantial competent evidence. Substantial evidence possesses both relevance and substance and furnishes a substantial basis of fact from which the issues can reasonably be revolved. See In re Adoption of Baby Girl T, 28 Kan. App. 2d 712, 717, 21 P.3d 581 (2001); In re Adoption of J.A.B., 26 Kan. App. 2d 959, 961, 997 P.2d 98 (2000).

The trial Transcript reveals the following background of events leading up to the execution of the consent to adoption.

The birth mother is a 29-year-old pharmacist with a doctorate degree. She is single and has a 4-year-old son with R.S. whom she never married. Baby Girl W is the product of a brief relationship between the birth mother and J.W. When the birth mother discovered that she was pregnant in April 2000, she told J.W., who made hints that he wanted her to have an abortion. The birth mother had decided early on that an abortion was not a choice for her. She became concerned that J.W. would not be around for support. She confided to her good friend D.S. that she felt her choices were to keep the baby or to place the baby for adoption.

In late April, the birth mother sought the serviced of Catholic Charities. She testified at trial she was not considering an adoption at that point, but needed to discuss her situation with someone. The birth mother first met with Kathy Van Zelfden, a counselor with Catholic

Charities, in May. Van Zelfden's notes on their first counseling session state: "(The birth mother) feels like the black sheep of the family because of her two children out of wedlock. She wants to find the 'right' man to marry. She understands her parenting responsibilities and her own capabilities. She wants information on adoption especially since she doubts (the birth father's) readiness to parent." The birth mother testified she had talked to Van Zelfden about her anxiety from the unplanned pregnancy, lack of involvement by J.W., and how to inform her family of the pregnancy. The two of them met about once every two weeks in May, June, and July. Adoption was discussed, but no definite plans were made.

J.W. was frequently out of town. He apparently never showed up for any appointments with Van Zelfden and had begun to "fade out" by June. Sometime in August, the birth mother told her parents about her pregnancy. They were not supportive of adoption.

In August, the birth mother told K.B., a friend, about her pregnancy and the possible adoption of her baby. K.B. told the birth mother that her brother-in-law and his wife, Mr. and Mrs. B., had been on an adoption waiting list with Catholic Charities for some time. The birth mother agreed that K.B. could have Mrs. B. contact her. The birth mother had met Mr. and Mrs. B. at K.B's wedding in 1996, but she had no

contact with them since then. A few days later Mrs. B. called the birth mother, indicating she would like to discuss adopting the baby.

Mrs. B. testified the birth mother told her she wanted her baby placed in a good Catholic family and she did not feel she could raise two children as a single mother. She also requested that Mr. and Mrs. B. not be present at the hospital for the birth because she was concerned that her mother would say something ugly to them or would become angry with the birth mother. Following this conversation, the birth mother signed a release of information to permit Van Zelfden to speak with Mr. and Mrs. B. as a prospective adoptive family.

In September, Mr. and Mrs. B., K.B., D.S., the birth mother, and Van Zelfden met at a restaurant. There was general conversation; Mr. and Mrs. B. talked about their experience and problems with foster children and they discussed adoption. Mrs. B. took pictures. The birth mother testified she never committed to an adoption or signed any papers to that effect. D.S. testified the birth mother was till undecided at that time but she said that, if she gave up the baby, Mr. and Mrs. B were the ones she would want to have the baby.

During one of the counseling sessions, Van Zelfden gave the birth mother documents regarding relinquishment and explained them so she could take them home for review or show them to someone else for review. Van Zelfden testified that because the birth mother was an

adult, the agency was not required by law to provide an attorney for her, but it was Catholic Charities' policy to arrange a meeting with an attorney. ON September 22, 2000, the birth mother had a consultation with attorney Douglas Keeling. She claims that she was sick that day with the flu and they talked for only 10 or 15 minutes.

In October, Mr. and Mrs. B. met with an adoption coordinator at Catholic Charities and contacted the birth mother to have lunch. At lunch, they discussed J.W. and that he had some Indian heritage and this might cause some additional paperwork.

The birth mother told Van Zelfden at their last appointment that she had scheduled an induction of labor on December 20 because she was uncomfortable and feeling ill. Van Zelfden told the birth mother she was scheduled to be out of town 3 days after the induction date. The birth mother was still wavering at that time on what she would do about adoption.

On December 20, 2000, the birth mother went to the hospital before 8 a.m. After admission, she spoke with Sharon Wilson, who was head of the grieving unit for mothers who had lost babies, explaining she was still undecided on what she should do. Wilson offered "help" telling her that giving a baby up for adoption was like having a baby die.

The birth mother requested to speak with a priest, Father Malone, to ask him questions

regarding adoption and the Bible. He answered her questions and held her hand for support while she was in labor. He visited the birth mother three times during her stay in the hospital. R.S. was also with the birth mother throughout her delivery. D.S. came to the hospital around 3 p.m. on December 20 and stayed with the birth mother until the early morning on December 21. Baby Girl W. was born at 7:38 p.m. on December 20, 2000.

The birth mother described the delivery as very painful and exhausting; she could not push the baby because of exhaustion, and the baby had to be taken out by a vacuum assist. She was given Percocet following the delivery for the pain from a second-degree tear.

Van Zelfden was at the hospital for another birth and asked if she could drop by and see how the birth mother was doing. The birth mother did not want to meet with Van Zelfden right after the delivery. She asked R.S. that night whether he could help her parent the baby.

The birth mother's sister, J.B., visited her the night the baby was born, and the birth mother told her it had been a successful vaginal deliver. J.B. was disappointed to hear from the birth mother that she had decided not to breast-feed the baby bases on Van Zelfden's advice. J.B. testified the birth mother was concerned about Mrs. B's health problem—diabetes. J.B. left late that night and did not return until December 22.

On December 21, 2000, Sarah Sisney, a social

worker for the hospital, but formerly an adoption counselor at Catholic Charities, asked the birth mother whether she had made a decision about an adoption. She told Sisney she had not made a decision and discussed her mother's disapproval of adoption, her relationship with R.S. with whom she was trying to reconcile, and how the baby was a new factor in their relationship. Sisney stated that every time she visited the birth mother, D.S. was present. Sisney stated the birth mother told her that R.S. could not say he would parent this baby as his own. Sisney advised the birth mother that foster care was available as an alternative to give her more time to decide and that the adoption did not have to happen at the hospital.

On December 22, 2000, the birth mother was authorized to go home. She had to be discharged from the hospital before midnight because she would be without insurance after that. The birth mother testified Sisney told her Catholic Charities would be closed over the weekend and no one would be available to facilitate the adoption, so the birth mother should make a decision about adoption before 5 p.m.

The birth mother authorized Van Zelfden to come to the hospital to help her go through with the relinquishment process. Van Zelfden testified she was surprised to hear from the birth mother. She had assumed the birth mother had changed her mind and gone home with the

baby. The birth mother mentioned the pressure she felt from her parents to take the baby home. Van Zelfden said she would be available to sign papers until 5 p.m., but if the birth mother needed assistance after 5 p.m., Van Zelfden's supervisor would be able to help her and telephone service woud be available 24 hours a day. After they discussed the parenting possibility, they talked about adoption. The birth mother told van Zelfden she was ready to proceed. A notary was called in, and Van Zelfden presented the birth mother with the paperwork—proof of identify and other documents for a relinquishment.

After the notary swore in the birth mother for signing all the documents, including the relinquishment, Van Zelfden asked the birth mother to state in her own words what the relinquishment meant to her, and the birth mother said, "I will no longer have any parental rights to (the baby girl) and the baby will go home with (Mr. and Mrs. B.)" The birth mother also stated she understood she could not get the baby back even if she changed her mind in a day, a week, or a month. She signed the relinquishment at 3:55 p.m. on December 22, 2000. The birth mother also indicated Van Zelfden could send her a copy of the relinquishment by mail after the executive director of Catholic charities signed the form. Van Zelfdens, Sisney, and the notary left to get the baby's medical papers processed. Van Zelfden came back after 5 minutes and asked the

birth mother whether she would like to make a call to Mr. and Mrs. B. The birth mother indicated she preferred that Van Zelfden make the call in her presence.

The birth mother testified that Van Zelfden went over the reasons why the birth mother was considering adoption. She testified that when she signed the papers, she felt everything was happening too fast. Van Zelfden had put the papers in fron of her and given her a pen to sign them. She testified she felt like she was drunk and uninhibited; physically she was tired, weak, and still in pain.

The birth mother testified that Percocet is a very strong narcotic that works on the central nervous system and is used for analgesia and sedation. She also testified that Percocet has the potential side effect of confusion, drowsiness, mental clouding, and dizziness. She concluded she had been affected by the Percocet and did not have the mental capacity to make a decision regarding adoption that day. The birth mother testified that she did not recall whether Van Zelfden, Sisney, or anyone else told her that once she signed the relinquishment, it was final as far as she was concerned.

Sisney testified that when she came into the room, D.S., R.S., and Van Zelfden were with the birth mother. Sisney further testified she heard the birth mother and Van Zelfden discussing the documents for relinquishment. Sisney heard the birth mother stating the baby would be better off with Mr. and Mrs. B. Sisney did not observe

the birth mother to be drowsy or unable to focus. The notary required that the birth mother raise her right hand and be sworn for each document. Van Zelfden had the birth mother look at each document and read it, and then Van Zelfden explained the documents as a relinquishment. Van Zelfden asked the birth mother to articulate in her own words what signing the document would mean, and the birth mother stated, "That meant that the baby would go to (Mr. and Mrs. B.) to raise." The notary asked the birth mother whether she was signing the document voluntarily and freely and whether she understood what she was signing. The birth mother answered all these questions in the affirmative.

Following the execution of the documents the birth mother remembered telling D.S. that the adoption was a mistake and she did not want to do it, and D.S. reassured her it was okay. When J.B. visited the birth mother, only D.S. was in her room. J.B. found the birth mother crying and very upset and telling her she had signed the papers. J.B. thought the birth mother looked very tired and distraught.

Mr. and Mrs. B. arrived at the hospital about 8 p.m. R.S. left the room to purchase gifts for Van Zelfden and Mr. and Mrs. B. Mrs. B Testified she and Mr. B. met with Van Zelfden alone to do some paperwork, then went to the waiting room of the maternity floor, where they met with D.S. and J.B. When R.S. came back, they all went in to see the birth mother between

8:30 and 9 p.m. The birth mother asked Mrs. B. whether she wanted to hold the baby and placed the baby in her arms. Mr. and Mrs. B. gave the birth mother a bracelet and a card. Just before midnight, the birth mother left the hospital with R.S. and Mr. and Mrs. B. left with the baby.

On the next morning, December 23, 2000, the birth mother and R.S. sent two outfits for the baby to Mr. and Mrs. B. But later that day the birth mother decided she had made a mistake and that she wanted the baby back. The birth mother testified she called Catholic Charities but no one was available. She called Mr. and Mrs. B. that evening to tell them she wanted the baby back. Mrs. B. told the birth mother to contact Catholic Charities.

The birth mother received a copy of the relinquishment document on December 28, 2000. She filed a petition to set aside the relinquishment on January 26, 2001, alleging she was under the influence of Percocet at the time she signed the relinquishment and her consent was not freely or voluntarily given. Catholic Charities filed a motion to strike all pleadings filed by the birth mother, stating she lacked standing in this proceeding. J.W.'s parental rights were terminated on January 29th, 2001.

At the close of the birth mother's evidence at trial, she made an oral motion for a directed verdict. The trial court denied the motion, stating the primary question remained as to whether the extent and duration of the birth mother's indecisiveness could rise to the level of

making the relinquishment not freely and voluntarily given.

After both parties presented evidence, the trial court denied the birth mother's petition to withdraw her relinquishment and held that the relinquishment was valid because the birth mother had signed it freely and voluntarily with full knowledge of its effect.

The birth mother has appealed this decision to this court.

The Appellate court's role in reviewing the trial court's decision on a motion to revoke consent to adoption it to determine whether the trial court's findings of fact and conclusion of law are supported by substantial competent evidence. In re Adoption of Baby Girl T, 28 Kan. App. 2d at 717. When a trial court makes a negative factual finding, the party challenging that finding must prove arbitrary disregard of undisputed evidence or some extrinsic consideration such as bias, passion, or prejudice, as the negative finding signifies the failure of the party upon whom the burden of proof was cast to sustain it. Thomason v. Stout, 267 Kan. 234, 238, 978 P.2d 918 (1999).

The legislature has provided fairly specific statutes to govern the process of relinquishment and adoption. K.S.A. 59-2114 provided:

"(a) consent shall be in writing and shall be acknowledged before a judge of a court or record or before an officer authorized by law to take acknowledgements.... A consent is final when executed, unless the consenting party,

prior to final decree of adoption, alleges and proves by clear and convincing evidence that the consent was not freely and voluntarily given. The burden of proving the consent was not freely and voluntarily given shall rest with the consenting party."

The birth mother focuses on several findings of fact to assert that her relinquishment was not freely and voluntarily given. First, she argues that she was under the influence of two potent narcotics when she signed the documents of adoption. Second, she argues she was pressured by the social workers, whose conduct was unethical and improper.

The birth mother emphasizes the importance of the following evidence: She was exhausted and in pain from the birth and the second-degree tearing; she was taking Percocet; she was without sleep for more than 48 hours; she had blurry vision; and she was undecided about adoption until the day of signing the relinquishment paper.

In an earlier case where a birth mother attempted to revoke her consent to adoption, the Kansas Supreme Court states:

"The legislative intent evidenced in the law reflects a strong public policy to stabilize adoptions and prevent revocation of consent of the mother on a mere when. This court has recognized when the consent is properly acknowledged as it was here, '(t)the acknowledgment serves as a prima facie proof of the validity of the consent, and ... that the

written consent was freely and voluntarily given.' In re Adoption of Trent, 229 Kan. 224, 228, 624 P.2d 433 (1981)" In re Adoption of Irons, 235 Kan. 540, 547, 684 P.2d 332 (1984).

The birth mother must show fraud, duress, undue influence, mistake, or lack of understanding in order to rebut the presumption of validity under the circumstances. See 234 Kan. at 547.

Whether consent to adoption was freely and voluntarily given or was tainted by undue influence necessarily depends on the facts and circumstances of each case. 235 Kan. At 550 (citing in re Adoption of Chance, 4 Kan. App. 2d 576, 583, 609 P.2d 232 (1980)).

The birth mother urges us to reweigh the evidence and test the credibility of witnesses. This is not the function of the reviewing court. Our review is only to determine if there is evidence that supports the trial court's findings, not whether there was evidence that might have supported contrary findings. See Irons, 235 Kan. At 550 (citing Chance, 4 Kan. App. 2d at 583). We will not reverse such a determination unless no reasonable person could have arrived at it based on the information at trial.

The birth mother points out that her delivery was a painful and exhausting experience, but the medical records show the birth was uncomplicated and the baby was healthy. The birth mother was authorized by her doctor to be discharged long before she signed the relinquishment papers.

The birth mother argues Van Zelfden and Sisney pressured her and rushed her into signing the papers without explaining the finality of the relinquishment. However, the record shows the birth mother was given a set of documents to review months before the birth, she had consulted an attorney, and the effect of each document was explained as she signed it before the notary. The birth mother is an educated professional with a doctoral degree and seemed to understand the meaning of what she had done following the execution of the relinquishment. As noted above, this was her second child.

We understand the birth mother's use of the term, "undue influence" as being primarily in reference to the drugs and not to the relationship between the social workers and herself. The mere assertion of undue influence is not sufficient to shift the burden of proof, moreover, in addition to the confidential relationship, there must exist suspicious circumstances. See Irons, 235 Kan. at 547. Under the facts of this case, there appears to be neither suspicious circumstances nor a confidential relationship. See 235 Kan. at 547-48.

We refer to a line of cases examining other birth mothers' attempts to revoke their consent to adoption signed after the child's birth, where they argued they had not signed them freely and voluntarily. In re Adoption of Baby Girl H, 12 Kan. App. 2d 223, 231, 739 Pl2d 1 (1987), an

18-year-old unmarried mother executed a consent to adoption "within a time span of eight minutes to one hour and eight minutes form the actual birth of the child." The appellate court declined to establish a bright line rule, indicating it is better left to the legislature to adopt a specific waiting period. 12 Kan. App. 2d at 231.

In response to the holding in Baby Girl H, the legislature enacted K.S.A. 59-2116 in 1990 to include a 12-hour waiting period before the consent may be executed. In In re Adoption of N.A.P., 23 Kan. App. 2d 257, 266, 930 P.2d 609 (1996), rev. denied 261 Kan. 1085 (1997), the birth mother argued that her consent was not freely and voluntarily given because of mistake and lack of understanding. The court found there was controverted evidence in the record as to the birth mother's state of mind; however, K.S.A. 59-2114 provided that the burden of proving consent was not freely and voluntarily rested with the consenting party. The trial court's conclusion that the birth mother's consent should not be set aside was a negative finding and that she failed to sustain her burden of proof to overturn it. 23 Kan. App. 2d at 267.

In another case, a paternal grandfather contested the consent to adoption by the birth mother, stating, among other things, her consent was not valid because she was under treatment for drug abuse at the time of signing the consent. In re Adoption of J.A.B., 26 Kan. App. 2d 959, 965, 997 P.2d 98 (2000). The court

affirmed the trial court's holding that the birth mother's consent was freely and voluntarily given, concluding there was no specific evidence showing lack of capacity to consent by the birth mother at the time she executed the consent. 26 Kan. App. 2d at 967.

We conclude the trial court's finding that the birth mother failed to meet the burden of proving her relinquishment was not freely and voluntarily given is supported by the evidence.

The birth mother next argues that Catholic Charities failed to comply with K.S.A. 59-2124, and, therefore, her December 22, 2000, relinquishment should have been voided because she retracted it before the agency had accepted it. The director of Catholic Charities did not sign the document until January 3, 2001.

K.S.A. 59-2124(a) state's:

"Any parent or parents or person in loco parentis may relinquish a child to an agency, and if the agency accepts the relinquishment in writing, the agency shall stand in loco parentis to the child and shall have the possess over the child all rights of a parent or legal guardian, including the power to place the child for adoption and give consent thereto."

The statute does not require the signature of the birth mother and the agency representative be obtained simultaneously, as the birth mother seems to suggest. A relinquishment is not an offer that can be revoked before it is accepted as in a commercial transaction. If the legislature had intended to permit withdrawal of a

relinquishment after it has been properly signed, it could have done so. The principles of common-law contract should not be applied. The only statutory basis to void a relinquishment is to show that consent was not voluntarily given, and the birth mother has failed to carry her burden in this case.

The birth mother also argues the 12-hour waiting period is unconstitutional because it is an arbitrary and baseless number picked by the legislature. She points out that a birth mother may still be under the influence of drugs and unable to make a clear decision regarding adoption. She further argues that K.S.A. 59-2114 is unconstitutional because it allows the counselor for the adoption agency to "perform the duties of a judge." Without requiring a birth mother to have her own counsel present.

The appellee points out that the birth mother did not raise the constitutionality issue at the trial; therefore, the issue is not properly before the appellate court.

Generally, where constitutional grounds for reversal are asserted for the first time on appeal, they are not properly before the appellate court for review. Ruddick v. Bowing Co., 263 Kan. 494, 498, 949 P.2d 1132 (1997). However, when it is necessary in order to determine the merits of the action or where the issues cannot be intelligently decided without doing so, the constitutionality of a statute may be addressed on appeal, even if the parties failed to raise the constitutional question, failed to plead the

question, or failed to present the question to the trial court. U.S.D. No. 443 v. Kansas State Board of Education, 266 Kan. 75, 91, 966 P.2d 68 (1998). Notwithstanding the birth mother's failure to raise this issue at the trial level, we will address the question.

The constitutionality of a statute is a question of law, a question over which an appellate court has unlimited review. An appellate court presumes a statute is constitutional and resolves any doubt in favor of upholding its validity. Before an appellate court may strike a statute as unconstitutional, a review of the statute must clearly reveal, beyond substantial doubt, that no reasonable construction will bring the statute into conformity with the mandates of the state or federal constitution. In re Adoption of Baby Girl T, 28 Kan. App. 2d at 723.

K.S.A. 59-2116 provided: "A consent or relinquishment may not be given by the mother or accepted until 12 hours after the birth of a child. Any consent or relinquishment given by the mother before 12 hours after the birth of a child is voidable, prior to the final decree of adoption."

Baby Girl W. was born at 7:38 p.m. on December 20, 2000. The birth mother signed the relinquishment at 3:55 p.m. on December 22, 2000. Her signing occurred approximately 44 hours after birth. Therefore, her argument that the 12-hour waiting period is unconstitutional because it is too short compared to other states does not apply in this case. She further argues

the statute violates equal protection because it guarantees that adoptive parents get the child with no protection of the birth mother's liberty interest. This argument is not persuasive. Contrary to the birth mother's contention, the statute does not mandate the decision be made 12 hours after the birth. A birth mother may take more time than 12 hours to decide upon adoption and did so, in this case.

The legislative history of K.S.A. 59-2116 shows that several concerns were addressed when the stature was amended. In 1989, the legislative committee voted to change the mandatory time before consent from 24 hours to 12 hours for the birth mother and to allow the birth father to relinquish any time after the birth. See In re Adoption of J.H.G., 254 Kan. 780, 789, 869 P.2d 640 (1994). Judicial Council comments to the proposed statute in 1990 indicated that the committee recognized the 12-hour waiting period would not assure a free and voluntary consent in every case; however, it added a degree of protection that was not mandated under the existing statutes. 254 Kan. at 790.

The legislature provided for a legal attack on consent by a birth mother which is induced by fraud, coercion, mistake, or lack of understanding. K.S.A. 59-2114. Accordingly, a birth mother is afforded greater protection than just the 12-hour waiting period. The birth mother's constitutional rights have not been limited, and a valid public policy concern is that the legal status of children should not be

suspended for a longer period of time than necessary to effect a valid adoption. See In re Adoption of Baby Girl T, 28 Kan. App. 2d at 725.

In addition, the birth mother argues K.S.A. 59-2114 is unconstitutional because it allows the social worker for the adoption agency to act as a judge. The statute requires the consent be in writing and acknowledged "before a judge of a court of record or before an officer authorized by law to take acknowledgements." K.S.A. 59-2114. A notary public has authority to take acknowledgements and administer oaths and affirmations. See K.S.A. 53-107. The birth mother indeed signed the relinquishment before the notary public, who was authorized to take acknowledgements. The birth mother's arguments on this point are not based on the facts of this case and are without merit.

We find the birth mother's arguments that K.S.A. 59-2114 is unconstitutional are unpersuasive.

The birth mother further argues the trial court erred in excluding expert witness testimony. She also argues the court allowed irrelevant facts to cloud the issue.

The admission of evidence lies within the sound discretion of the trial court. An appellate court's standard of review regarding a trial court's admission of evidence is abuse of discretion. Moore v. Associate Material & Supply Co., 263 Kan. 226, 244, 948 P.2d 652 (1997); see Olathe Mfg., Inc. V. Browning Mfg.,

259 Kan. 735, 762, 915 P.2d 86 (1996) (trial court's decision will not be overturned absent an abuse of discretion resulting in prejudice to the part whose testimony was excluded).

Virginia French, a clinical pharmacist, testified for the birth mother as to the effects of drugs on the birth mother, after she reviewed the medical records. During direct examination, there was only one objection by the opposing counsel on the ground that French was "making assumptions and (he) would object as to foundation." French was able to express her opinions regarding an epidural, Nubain, Motrin, and Percocet. She further testified as to the side effects of these drugs and other factors that contribute to the effect of the drugs and the range of time of their effect.

It appears from the record that the expert testimony of French was admitted into evidence. In addition, the birth mother, as a pharmacist, testified as an expert as to the effects of the drugs. The birth mother has not shown any prejudice she suffered by the trial court's exclusion of any expert testimony nor as error in the ruling complained of. See Irons, 235 Kan. at 546. The trial court was free to evaluate the evidence and weigh the testimony of the witnesses as a finder of facts. The trial court did not err in excluding part of the expert testimony.

The birth mother did not object to admission of so-called irrelevant evidence, and the trial court was free to consider all the evidence and decide on the credibility of witnesses. That the

court believed the other witnesses' recall of events instead of the birth mother's is not evidence of abuse of discretion by the trial court.

The birth mother makes two arguments that the trial court was biased against her: (1) The court allowed the Catholic Charities' attorney to prepare the journal entry; and (2) the court allowed the Catholic Charities to not comply with the law regarding relinquishment.

Although Catholic Charities' attorney prepared the journal entry, the birth mother's attorney also approved it before filing. This is a common practice. The birth mother did not raise the issue at the trial level. The issue of statutory compliance by Catholic Charities has been addressed above.

There is substantial competent evidence to support the trial court's finding that the birth mother signed the relinquishment freely and voluntarily as defined by Kansas law.

Affirmed.

APPENDIX (a)

Transcript of Social Worker Admitting Not Giving Copy Due to Attorney Advice

CROSS EXAMINATION

By MS. Craft-Rochat:

Q. Miss Van Zelfdin, you stated that Miss Willson requested that you mail her a copy of the relinquishment after it had been signed by the director of your agency. Correct?

A. That's correct.

Q. But you never did that. Correct?

A. We did not.

Q. Why?

A. Because she had changed her mind at that point and I didn't know legally if that was something I should do or not. I know I brought that up to Mr. Bauer and he spoke to you and he had gotten her a copy of it later on, or that is what I was told.

Appendix B

IN THE EIGHTEENTH JUDICIAL DISTRICT COURT, SEDGWICK COUNTY, KANSAS
PROBATE DEPARTMENT
IN THE MATTER OF THE APPLICATION TO ADOPT
BABY GIRL WILLSON,
CASE No 01-A-0013
DOB 12/20/2000
A MINOR CHILD

Journal Entry of Judgment

Now on this 18th day of April, 2001, this matter comes before the Court of entry of a final judgment in the above captioned case. Petitioner, Catholic Charities, Inc., appears by and through its counsel, Martin Bauer. Respondent Deanna C. Willson appears through her counsel, Julia Craft-Rochat. There are no other appearances.

1. Deanna C. Willson and Justin Walters are the birth parents of Baby Girl Willson born at Wesley Medical Center on December 20, 2000.
2. Deanna C. Willson and Russ Schneider are the parents of Dylan Schneider born on December 18, 1996. While Ms. Willson and Mr. Schneider have known each other for 7 years, they are not married but co-parenting Dylan. There was a concern her being a single parent to another child would create additional problems.
3. Deanna C. Willson parents are Catholic and do not generally approve of abortion

Willson became depressed and received counseling from Janice Dixon through Catholic Charities.

11. In August of 2000, Deanna C. Willson contacted her best friend Katie Burenheide and informed her of the pregnancy. When Deanna C. Willson mentioned she was considering placing the child for adoption, Katie reminded Deanna of Katie's brother-in-law and sister-in-law, Mark and Sarah Burenheide who Deanna met at Katie's wedding and where she learned Sarah Burenheide had diabetes affecting her ability to have children by having her tubes tied.
12. Deanna C. Willson was presented other adoptive parents by Catholic Charities but selected Mark and Sarah Burenheide as the prospective adoptive parents. She talked to Sarah Burenheide at least 10 times by telephone throughout the remainder of her pregnancy and met with Burenheides twice in Wichita.
13. Russ Schneider, Russ's sister, Dana Stoetart, Deanna's friend, her brother were supportive her sister was generally supportive of the adoption.
14. Deanna's parents were opposed to the adoption.
15. Deanna C. Willson requested and reviewed information about her options but on August 28, 2000, initialed a goal to create an Adoption Plan.

4. Deanna C. Willson is a licensed pharmacist with a part time job with Target
5. In the spring of 2000, Deanna C. Willson became pregnant by Justin Walters who had not mentioned long term relationship or discussed co-parenting a child. She has his cell phone number.
6. When Deanna learned she was pregnant she informed Justin of the pregnancy. He indicated he preferred her to have an abortion.
7. Deanna Willson considered the situation to involve a crisis pregnancy because the pregnancy was unexpected. She contacted Catholic Charities, talked to her doctor's office from a referral from a friend. She delayed telling her parents, siblings and Russ Schneider.
8. Deanna C. Willson consulted Catholic Charities in late April 2000 for counseling, not specifically for adoption consultation. Deanna began regular meetings with Kathy Van Zelfdin of Catholic Charities on May 15, 2000.
9. Several appointments were scheduled for Justin to come. He never attended.
10. Deanna C. Willson informed Russ Schneider of the pregnancy late in August 2000. Catholic Charities records reflect that Mr. Schneider made Deanna feel bad, asked "what were you thinking" and she feared she has lost her relationship with him. Deanna C.

16. On September 18, 2000, Deanna was presented with a copy of the legal adoption papers by Kathy Van Zelfdin and sent home with her. On Sept. 27, 2000 she was provided legal counseling by Catholic Charities by Doug Keeling.
17. There was no contact with Justin Walters, the birth father, for approximately 2 months prior to delivery despite Catholic Charities to contact him.
18. As reflected in Sandra Sisney's notes or Cath. Char. Records, Deanna Willson indicated several of her reasons for placing the child for adoption including but not limited to:
    a. Adoption was best for the child
    b. Adoption would give a 2 parent home
    c. Adoption would allow her to focus on Dylan
    d. Concerned about being a single parent
    e. Russ Schneider did not know if he could help
    f. Her parents would be critical whether she parented of placed
    g. She had no support from Justin
    h. Avoid complicating relationship issues
    i. Avoid concern about the child's reaction to absent birth father
19. Deanna Willson entered the hospital for induction the morning if December 20, 2000. Russ Schneider and Dana Soetaert

21. Deanna Willson had been approved to be discharged from the hospital by her doctor prior to signing.
22. On December 22, 2000, at approx. 3:00 P.M., Deanna Willson, Baby Girl Willson, Russ Schneider, Dana Soetert, Sarah Sisney, and Kathy Van Zelfdin met in Deanna's room and discussed Deanna's considerations related to the baby. Kathy Van Zelfdin's notes reflect that Deanna was ready to sign the relinquishment. Deanna never indicated she was not going to sign. The notary was called, and Deanna was explained the forms. Deanna signed the Proof if Identity, Status of Child Statement, Indian Heritage Affidavit, Medical Authorization, Wesley's Authorization to Release infant. Various of these sworn documents state Deanna C. Willson signed the document freely and voluntarily with the full understanding of the meaning of the instrument. Deanna Willson orally stated she did understand the documents. The relinquishment was separately reviewed. Deanna was asked to explain the form, which she did to the satisfaction if the those present including the notary who swore Deanna to the truthfulness of the relinquishment a second time after she signed.
23. Deanna C. Willson approved Kathy Van Zelfdin calling Mark and Sara to come to

were supporters. Kathy Van Zelfdin visited with Deanna while she was in labor but had no direct contact with Deanna Willson from the time of the baby's delivery at 7:38 P.M. on December 20, 2000 until Deanna agreed on December 22, 2000 to allow Kathy Van Zelfdin to come to the hospital at approximately 3:00 P.M. Sarah Sisney and Kathy Van Zelfdin treated Deanna's admission as a confidential admit and therefore would not allow any contact with Deanna Willson by anyone unless initiated or approved by Deanna C. Willson. Sarah Sisney provided ongoing contact with Deanna C. Willson throughout December 21, and 22, 2000.

20. The medical records list the birth as uncomplicated. The doctor prescribed Percocet for Deanna Willson. She could request one tablet every 3 hours or 2 tablets every 4 hours. According to Deanna Willson, Percocet enters the blood stream within 20 minutes and peaks at one hour thereafter. Its duration of action lasts 4 to 6 hours thereafter. After delivery, Deanna received the following: Percocet December 21-1 tab at 00:25 A.M., 1 at 1:00 AM, 2 tabs at 5:00am.,2 tabs at 9:50am, 2 tabs 3:45pm and 1 tab at 8:15pm.On December 22, 1 tab at 20 minutes after midnight, 1 tab at 8:40am, 1 at 11:55am, 1 tab at 4:45 pm and 1 at 8:40 pm.

the hospital and also asked if Katie Burenheide could come with them.

24. Deanna C. Willson later stated to her friend, Dana, that she had made a mistake before Mark and Sarah came. Dana reassured her that she made the right decision. Neither Deanna nor Dana every indicated to Sarah Sisney, K. Van Zelfdin, that she had changed her mind.
25. Deanna C. Willson invited her mother to see the child but she did not see the baby or Deanna at the hospital.
26. Baby Girl Willson was placed in Mark and Sarah's custody in the presence of Deanna Willson. Katie Burenheide was there.
27. Russ Schneider gave Kathy Van Zelfdin gifts
28. On December 23, 2000, Deanna C. Willson sent 2 outfits for the baby to the Burenheides.
29. Late on December 23, 2000, Deanna C. Willson contacted Catholic Charities and then the Burenheides saying she was doing terrible and wanted the baby back.
30. Deanna C. Willson contacted Justin Walters on December 27, 2000 asking that he object to the termination of his parental rights so she could retain her parental rights. Justin Walters received formal notice of the hearing to terminate his rights and made no appearance. His rights were terminated on January 29, 2001.

31. Any finding of fact deemed a conclusion of law is incorporated in the following section.

Conclusions of Law

1. The Court has jurisdiction over the persons and subject matter and venue is proper in this court.
2. Deanna Willson signed the relinquishment on December 22, 2000, freely, voluntarily, and with full knowledge of its effect which terminated her rights to her child.
3. Deanna Willson failed to meet the requirements of KSA 59-2114 to show by clear and convincing evidence, fraud, under the influence,(THIS IS SUPPOSED TO SAY UNDUE INFLUENCE-ATTORNEY INSTALLED THIS DECEITFUL WORDING TO COVER UP THE SIGNIFICANT OF BEING ON DRUGS),mistake, or lack of understanding as to the effect of her signing the relinquishment form. Said standard was previously deemed applicable to a relinquishment considering the Kansas Adoption and Relinquishment as a whole. The Court relied upon and considered the factors discussed in In re Adoption of Baby Girl T (JUDGE WAS AN ADOPTIVE PARENT)
4. The relinquishment is validated and Petitioner's Petition to declare the relinquishment valid is granted and

Respondents Petition to Withdraw denied so that the Adoption of Baby Girl be allowed and to proceed without further notice to the baby's mom.

It is therefore ordered that the Petition of Catholic Charities be and is hereby granted and the relinquishment signed while on drugs by Deanna Willson on December 22, 2000 is declared valid and enforceable resulting in the termination of her parental rights to her baby.

It is further ordered that Deanna C. Willson Petition to Withdraw her Relinquishment be denied.

It is further ordered that the separation of baby and mother may proceed without further notice to Deanna C. Willson

It is so Ordered JUDGE MICHAEL CORRIGAN

APPROVAL:

Martin, Pringle, Oliver, Wallace

"s/M. Bauer"

Martin Bauer

Julia Craft-rochat

APPENDIX C

SUPREME COURT ORDER
DISTRICT CASE NO. 01A13

IN THE SUPREME COURT OF THE STATE OF KANSAS

DEANNA WILLSON
PRO SE
615 N PERSHING
WICHITA KS67208

IN THE MATTER IF THE APPLICATION TO ADOPT BABY GIRL W
DOB 12/20/00
A MINOR CHILD
CASE NO. 01-87291-A

YOU ARE HEREBY NOTIFIED OF THE FOLLOWING ACTION TAKEN BY THE COURT: PETITION FOR REVIEW BY NATURAL MOTHER
CONSIDERED BY THE COURT AND DENIED.
RESPONSES NOTED.

06/13/2002.
CAROL G. GREEN
CLERK

APPENDIX D
MOTION TO HEAR ABOUT RECORED ON APPEAL

Comes now Deanna Willson, appellant and natural mother, to request the court to be informed about the contents of the Record on Appeal. I Deanna C. Willson did not receive a notice from the attorney Martin Bauer about the hearing ordered on September 19, 2001 for October 1, 2001. I accidentally found out about it after calling the Probate Court to find out about the status of the Motion for Inclusions to the record that I and the other attorney filed.

On October 1, 2001 I attended the hearing where we discussed particular items to be included in the record. Upon receiving the contents after the hearing, there are listed items that were not stipulated to and not admitted based on relevance. At the district level and at the hearing these were not allowed. For example, the Paternity Case No 99 d3719 which never even went to court.

Also, most of the record was kept in Martin Bauer's office after the trial without a chance for me to even view all of the items Martin slipped in there. The records of T. Tuggle and J. Cox were not admitted. I brought this up to Judge Corrigan who just ignored it and said to bring it up with the Appeals Court.

Also, I was surprised and confused how much adoption propaganda was put in the record. In fact, one author of "What is Open Adoption" is distressed to learn they are using

this since the ethical guidelines were seriously violated. I feel I must let you know to make it fair to me.

I also received a threatening letter from someone on the other side with no return address in May 2001, threatening me to stop criticizing Kansas adoption law. The letter contained information only someone very close to the trial would know. I find this tactic deplorable and criminal. A Harvard attorney that belongs the National Adoption Congress told me to file a complaint with the police. They encouraged me to obtain a restraining order if I felt it was the attorney harassing me.

I will not object to the adoption propaganda if I am allowed to add a letter written by Brenda Romanchik expressing how she feels about how the adoption was handled since one of the booklets that Martin put in the record is hers. Thank You,

Deanna C. Willson, Pharm. D

APPENDIX E

March 19, 2001

To: Probate Court
The Honorable Judge Michael Corrigan
Wichita, Kansas

From: Brenda Romanchik, Director
Insight: Open Adoption Resources and Support
and Partner, R-Squared Press

Re: Baby Girl Willson

Your Honor,

It has come to my attention that my pocket guide, *What is Open Adoption?* , has been submitted to court as evidence in favor of Catholic Charities of Wichita, Kansas in the case of Baby Girl Willson. I cannot tell you how greatly this distresses me, as I strongly believe that Catholic Charities of Wichita behaved in an unprofessional and unethical manner in obtaining the Consent to Adoption from the baby's mother, Deanna Willson.

I am enclosing a number of supporting documents that will clearly state my beliefs. Attachment A is *A Statement of Beliefs-Open Adoption, from the Fifth National Conference on Open Adoption in Traverse City, Michigan,* of which I was a faculty member. I am highlighting statements I believe apply to the case. While this document does not address the legal aspects of this case, I firmly believe they are the most ethical way to practice adoption.

I am also enclosing another pocket guide of mine, *Your Rights and Responsibilites: For Expectant Parents Considering Adoption,* (Attachment B) a publication Catholic Charities is familiar with, yet chose not to share with Deanna Willson. Had she had access to this information she may have been able to make a more informed choice when pressured to sign the consent to adoption.

Attachment C is an excerpt *from The Child Welfare League of American's Standards of Excellence for Adoption Services.* In their section on *The Core Values and Assumptions Underlying Adoption Services,* I have highlighted the areas I believe apply to the case.

If you have any questions at all, please feel free to call me at any time. I would be more than happy to talk to you.

Sincerely,

"s/Brenda Romanchik"

Brenda Romanchik

A Statement of Beliefs - Open Adoption

CHS-Catholic Charities
(616-947-8110, Fax 616-947-3522)
1000 Hastings, Traverse City, Michigan 49686

Values Based Open Adoption Program - A Statement of Beliefs

1. We understand open adoption to be a transfer of parental responsibilities which preserves the relationship between birthparents and the child they entrusted to the family they painstakingly selected. It necessarily includes a full disclosure of identifying information and features a commitment to lifelong relatedness.

2. We believe that every form of adoption must center on meeting the needs of the adoptee. We believe that children are best served by preserving their connection to their family of origin.

3. We believe that the appropriate perspective on adoption views adoptive parents as a resource to the birthfamily, not vice versa.

4. We believe that birthfamilies and adoptive families deserve equal respect and courtesy.

Services offered to one should also be offered to the other.

5. We assert that there is a tragic dimension to adoption. Every participant in adoption experiences pain and loss. Any significant description of the adoption experience must recognize the theme of loss.

6. Recognizing that untimely pregnancy generally defies cheerful resolution, we support efforts to prevent it.

7. We believe the first effort in working with pregnant families must be to preserve that family.

8. We are committed to protecting the rights of birthfathers. We recognize that they are important in the lives of their children and seek their full participation in the open adoption experience.

9. We believe birth families require at least fourteen days following the birth of the child to consider their options before legally committing themselves to an adoption plan. We will respect a birthfamily's sense of pace.

10. We recognize a professional obligation to assist clients to reach fully informed decisions. We will defend families facing the challenges of untimely pregnancy from premature feelings of obligation, and will defend their opportunity to change course in timely fashion.

11. We recognize that geographic distance makes open adoption more difficult to plan, implement, and sustain. Professionals are obliged to alert clients to reliable resources which may be more conveniently located.

12. We recognize that adoption is a lifelong experience and that adoption organizations must remain a resource to our clients through the years.

13. We believe adoption services must not yield personal or organizational profit.

14. We will operate our programs with fiscal integrity and openness. We will work to keep our fees affordable so participation in our program does not require financial prosperity.

15. We recognize an obligation to share significant results, positive and negative, with other professionals in the field.

16. We recognize that the spirit of candor which characterizes open adoption needs to be applied to adoptions from the past. We actively support open records and the right of adoptees to their original name.

17. We believe our efforts are best evaluated in terms of services provided, not in terms of the numbers of placements made.

18. We recognize an obligation to contribute to the public's understanding of adoption issues.

19. We believe that efforts to promote particular programs must never offend the general public's sense of propriety. We believe the commercialization of adoption diminishes the dignity of children.

20. We believe the vitality of the institution of adoption is directly linked to its commitment to candor. We approach every adoption with the presumption it will be open. Any departure from candor is considered extraordinary and requires documented justification.

21. We believe the spirit of openness and candor begins with the professional. It is his or her responsibility to create a climate in which client honesty is encouraged and reinforced.

22. We believe the most promising context for the delivery of ethical adoption services is the nonprofit agency. We acknowledge that our organizations often fall short of our ideals. To live up to their potential, agencies must relentlessly root out inconsistencies and self serving practices.

23. We recognize that we are powerful because we hold significant information. We recognize our responsibility to pass this power to our clients throughout the adoptive process by emphasizing the educational features of our program.

24. We recognize that integrity requires consistency in our beliefs and actions. We will

select our affiliations carefully, supporting organizations whose purposes and practices are consistent with ours, and working to reeducate organizations whose practices are in direct opposition to our beliefs.

25. We believe that dynamic adoptive practice engenders a spirit of community. We strive to provide adoption cultures in which financial and emotional risks are shared. There should be no monetary connection between adoptive parents and birthparents.

26. We believe adoptions of quality are adaptable. Every adoption will be a unique expression of the original and continuing creativity of its participants.

27. We believe the practice of open adoption is dynamic and continually evolving. We are receptive to responsible innovation.

(version 1.6 1-95)

This Statement of Beliefs is the work of Jim Gritter at Catholic Human Services in Traverse City, with the input of participants at the five National Open Adoption Conferences he has managed over the past 14 years. This specific version was presented at the Fifth National Conference on Open Adoption, May 3-5, 1995. This copy was typed by Bill Betzen, Dallas,

Texas, and is reprinted here with Mr. Gritter's permission.

If you would like to send any comments or questions to Jim Gritter his E-mail is jimgrit@aol.com

Return to Home Page

Bill Betzen, ACSW, LMSW, Webmaster
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address:http://openadoption.org/bbetzen/index.htm

APPENDIX F
Transcripts of Testimony

Deanna's demeanor

Q. Would you describe Deanna's demeanor that first day? You were at the hospital with her?
A. Deanna best described it. It would be very unsure, very tired. I don't know, wishy washy is the word. I am not sure, very indecisive and wrapped up in the birth of this baby. Just not in a very straight frame of mind at all as to what to do. Just not in a very straight frame if mind, period.

Q. Dana, what was Deanna's demeanor when you arrived at the hospital?
A. She was in a lot of pain and she seemed to alternate between sad and able to carry on a conversation

Q. And you got that conclusion from just what was explained to you in Deanna's presence that, roughly , hour period?
A. Yes, but I was also in a very clear state of mind compared to Deanna.

Indecisiveness

Q. Dana, from the time that she told you about her pregnancy in April up until the time she went into the hospital, did she ever tell you that she had made a definite decision with respect to what to do about the pregnancy?
A. No.
Q. Did Kathy Van Zelfdin (CC social worker) ever appear in her room on December 20th?
A. Yes, prior to her actually having the baby.
Q. Do you recall when that was?
A. I believe it was before 7:00 in the evening but it was after she had finished up at the office.

Q. Did Deanna request that she come to the hospital?
A. Not as far as I know.
Q. What did Kathy say when she came into the room?
A. She was very excited. We are going to have a baby tonight. That struck me as very odd because it was not a happy occasion. She asked us when we thought the baby would be born and what size she would be. How much she would weigh. Just that she didn't ask Deanna how she was doing or how she was feeling or what her concerns were or what she thought she might do. I believe she had talked to Mark and Sarah and decided that Deanna was going to be induced.
Q. That's what Kathy said?
A. Yes.

Q. Dana, after you got up to the hospital before delivery of the baby, did she ever communicate to you, I have made a decision, this is what I am going to do?
A. No.
Q. What did she say?
A. She didn't know.
Q. Still did not?
A Yes.
Q. How many times on Thursday do you think that Ms. Sisney told Deanna that she had to make a decision?
A. I don't know.
Q. More than 10?
A. Yes, I would say more than 10, less than 20, somewhere between 10 and 20 would be my guess.
Q. Was there any mention on Thursday by Ms. Sisney of any deadline?
A. Well, we knew all along that Deanna had to go home Friday night. On Friday I know for sure that

this needs to be done. If you are going to give her up for adoption, the papers have to be signed by 5pm and that Catholic Charities could not do it (after that) That if Deanna chose to place her for adoption, but she didn't before she left the hospital, the baby would have to go to foster care, and she kept suggesting that it was much easier to sign the papers before Deanna left the hospital.

Q. What information do you recall she gave Deanna about the option of placing the baby temporarily into foster care?

A. I know that she said that she would have to do if she was unsure what she wanted to do. Deanna asked about if she could take the baby home and she said, no that was not a good idea.

Q. That is what Sarah said – to her?

A. Yes.

Q. Did she explain why?

A. She said that it would be too hard to make a decision to place her up for adoption if she took her home.

Q. At any time during the conversations with Deanna and Sara Sisney, be Thursday or Friday, did Ms. Sisney ever say, You don't need to make that decision today, now. You can take her home and take some time to decide?

A. No.

Q. Did you ever hear Deanna express concern about needing more time to make that decision?

A. Many times, both to me and to Sarah. I know she said it at least five times to Sarah that she felt like she needed more time. Why did it need to be rushed? That she just could not make a decision.

Q. What was Sarah's response to that?

A. That she needed to come up with a plan of what she wanted to do and that she had more time than

many mothers who sign after 12 hours and Deanna had more than 12 hours.

Q. On Thursday at any time did Deanna tell you that she had made a decision?
A. No.
Q. Did you go back up on Friday?
A. I went up early Friday morning and stayed all day until 11:00 that night.
Q. And how did you find Deanna when you arrived Friday morning?
A. She was far more upset than she was Thursday.
Q. Describe, would you please, what about her?
A. She was—she kept explaining that she was very conflicted. That she loved the baby and she didn't know what to do and that she wasn't ready to make a decision.
Q. Do you recall on Friday how many conversations she had with Sarah Sisney?
A. I would say at least two, but I don't know exactly.
Q. And what was the content...?
A. That Deanna needed to make a decision and come up with a plan and come up with a plan on how to follow through on that.
Q. Was there ultimately a plan made?
A. Yes, that she would –I don't remember exactly what the plan was but it involved Deanna would have to come up with a time with the baby and then Kathy would come up with the papers in the afternoon time.
Q. Do you remember what time on Friday, approximately, that this plan was made?
A. It was after lunch but, you know before 3:30 or so, I would say.
Q. Do you recall how the plan came up? Did Sarah suggest the times? How did the plan come to be?
A. Sarah came up with the times.

Q. Who is the next person to come to Deanna's room on Friday?
A. I know that Kathy came in the afternoon after she had talked to Sarah with the papers and Russ was up there part of the time, too.
Q. Did Kathy have any contact with Deanna before she arrived in the room with papers?
A. No.
Q. Did a notary arrive at some point?
A. Yeah, shortly after Kathy.
Q. Tell me about what happened when Kathy arrived.
She brought out the papers and explained the papers to Deanna. And Deanna got very upset while she was showing her the papers.
Q. What did she do?
A. She burst into tears. Russ and I were crying too. Deanna asked for more time.
Q. Asked who for more time?
A. It was directed at Kathy and Sarah, I believe.
Q. And what was Sarah's response and Kathy's response?
A. They left the room, at most, for ten minutes.
Q. Then what happened?
A. They came back in. They started going through the papers. I am sorry, I do remember that before Kathy showed her the papers, that for a few minutes Kathy discussed the scenario what it would be like if she kept the baby or if she placed the baby.
Q. How did she express that?
A. She asked Deanna what it would be like if she kept the baby and everything about keeping the baby was portrayed in a negative light, that Deanna would have to work full-time. Both Dylan and the baby would be in daycare more than 40 hours per week. The child would not have a father figure most likely; everything was portrayed in a negative light.

Q. Who portrayed it negatively?
A. Kathy.
Q. Did she talk with Deanna about the adoption scenario?
A. Yes.
Q. Did she portray those negatively?
A. She emphasized that Mark and Sarah could provide for the baby and she talked a lot about that it was more positive to have two parents.

Lack of Sleep

Q. Dana, did Deanna sleep?

Q. A. Not that I know of. I mean they had a bed in there and she was lying there. A lot of the time it was just silent, but I do not know that she ever slept.

Q. Was she in pain throughout the night?
A. Yes.
Q. Was she taking medications?
A. Yes, she was taking Percocet as often as they would let her.
Q. Dana, how much sleep did you observe Deanna get on Thursday.
A. None, while I was there.
Q. And how would you describe her physical condition on Thursday?
A. She was very tired. She was in a lot of pain and she was taking pain medication. She was drowsy, but she couldn't relax to sleep.

Q. (Dana), How much sleep do you think that Deanna had over those 48 hours in the hospital?

Mr. Bauer: Objection
Court: Overruled

A.While I was there Deanna slept at most 4 hours and most of that was in the first night after the baby was born and then slept for 20 or 30 minutes at a time at most. That first day, you know, Thursday but Friday I didn't see her sleep at all, even the times I stayed the two nights. I was not there overnight Thursday. When I was not there, I asked her if she slept and she said No.
Q. Did she complain to you about any physical problems?
A. She was in a lot of pain from the episiotomy. She said she had blurry vision at one point. I remember her saying she had that side effect and that she was very drowsy and she felt bad.

Q. (Jennifer), What did she say about how much sleep she had?
A.None. No sleep.

Pressure and Coercion by Social Workers

Q. Dana, did you observe anything that Ms. Sisney did that you would describe as providing support for Deanna choosing to parent this child?
A. No.
Q. Did she explore that option with Deanna?
A. You mean like describe what it would be like?
Q. Yes.
A. No, Sarah didn't.
Q. Did she talk with Deanna about adoption?
A. She kept emphasizing that Deanna needed to make a choice whether she was going to parent or place. She talked to her—I do not recall- she talked to her about what it would be like to give her up for adoption, but she talked about what needed to be done to do that and a decision had to be made.
Q. What did she tell her needed to be done?

A. That she needed to make a decision

Q. (Jennifer), did Deanna give you info that made you believe they were biased?
A. More who they were, their titles and who they worked for as being very biased

Mr. Bauer: Objection

Court: Inquire about foundation allowed

Q. Let's break this down, Ms. Budler.
Q. Who do you think was biased that was talking to your sister?
A.Definitely the Catholic priest; I work a lot as a volunteer. Catholic Charities benefits with thousands of dollars with adoptions as well, so they would not be discouraging of it.. Kathy is a given as she is a worker for Catholic Charities and wants to see it through. The only other person, Sarah Sisney, (hospital social worker), who worked for Catholic Charities prior and had been Kathy's friend which I was concerned.

BY Ms. Craft-Rochat
Q. Ms. Vanzelfdin, prior to having Ms. Willson sign the relinquishment, did you check with anyone regarding what medications she had taken?
A. No.
Q.Ms. Sisney, did you check?
A. No

DIRECT EXAMINATION

MS. Craft-Rochat:
Q. Jennifer will you state your name for the court?
A. Jennifer Budler.
Q. Where do you live?
A. I live in Edmond, OK
Q. And who do you live with?

A. I have a husband, Dr, Michael Budler, son Michael and another son Morrie, and we are expecting.
Q. Are you related to Deanna?
A. She is my only sister.
Q. Are you employed outside the home?
A. Right now I am a stay-at-home mom.
Q. Are you trained in any area?
A. Yes, I have a Masters Degree in English from the University of Nebraska. I attended Law School in St. Paul Minnesota. Finished my Law Degree at Washburn University in Topeka, Kansas.
Q. And are you practicing law?
A. No, not at this time.
Q. Describe your relationship with your sister.
A. We are very close. Two years apart. Grew up in Omaha, Ne. Attended two different high schools but still close. Our parents let us choose what school we wanted to attend. She was my maid of honor at my wedding. She was there for the birth of my first child. Very typical close sister relationship.
Q. ..Did she tell you she was going to Catholic Charities?
A. She did. At that time I was under the impression she was there to get parenting options not so much bias for adoption

Mr. Bauer: Objection

Court: Sustained

Q.Under the impression from whom?
A. Under the impression from my sister the only reason she was going there was to talk about, to vent, about possibly being a single mother. Having alternatives laid out for her. But in reality,

Mr. Bauer: Objection

NARCOTIC AGONIST ANALGESICS

Actions:

Narcotic analgesics are classified as agonists, mixed agonist-antagonists, or partial agonists by their activity at opioid receptors. Five major categories of opioid receptors are known: mu, kappa, sigma, and epsilon. Actions of the narcotic analgesics now available can be defined by their activity at three specific receptor types:mu, kappa or sigma.

The μ receptors mediate morphine-like supraspinal analgesia, euphoria, and respiratory and physical depression. The κ receptors mediate pentazocine-like spinal analgesia, sedation and miosis. The ά receptors mediate dysphoria , psychomimetic effects (ie, hallucinations), and respiratory and vasomotor stimulation caused by drugs with antagonist activity.

Morphine-like narcotic agonists have activity at the μ and κ receptors, and possibly at the δ. Narcotic agonists include natural opioid alkaloids (eg. Morphine, codeine), semisynthetic analogs (eg, hydromorphone, oxycodone) and synthetic compounds (eg, meperidine, levorphanol, methadone).

Opiate receptors in the CNS mediate analgesic activity. Narcotic agonists occupy the same receptors as endogenous opioid peptides (enkephalins and endorphins) and both may alter the central release of neurotransmitters from afferent nerves sensitive to noxious stimuli.

The narcotics have a variety of secondary pharmacological effects, including:

CNS: Euphoria, drowsiness; apathy; mental confusion. Nausea and vomiting are caused by direct stimulation if the emetic chemoreceptors located in the medulla.

Comparative pharmacology is summarized below.

Drug	Analgesic	Antitussive	Respiratory Depression	Sedation
Phenanthrenes				
Codeine	+	+++	+	+
Hydrocodone	+	+++	+	nd
Hydromorphone	++	+++	++	+
Levophanol	++	++	++	+
Morphine	++	+++	++	++
Oxycodone	++	+++	++	++
Oxymorphone	++	+	+++	+++
Phenylpiperidines				
Alfentanil	++	nd	nd	nd
Fentanyl	++	nd	+	nd
Meperidine	++	+	++	+
Sufentanil	+++	nd	nd	nd
Diphenylheptanes				
Methadone	++	++	++	+
Propoxyphene	+	nd	+	+

Facts and Comparisons
February 1990
Nd-no data available
Table adapted from Catalano RB

FILED
FEB 27 2003
CLERK OF THE COURT

No. 02-1108

IN THE
Supreme Court of the United States

DEANNA C. WILLSON,

Petitioner,

v.

CATHOLIC CHARITIES, INC.,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO KANSAS COURT OF APPEALS

BRIEF IN OPPOSITION

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PARTIES TO THE PROCEEDING AND STATEMENT PURSUANT TO RULE 29.6

Petitioner's designation of parties warrants mention. She designated "Catholic Charities Adoption Agency" and "M. Bauer" as Respondents in this matter. However, Catholic Charities, Inc. is the only proper Respondent. Mr. Bauer is the attorney who represented Catholic Charities, Inc., before the Kansas Court of Appeals and the Kansas Supreme Court. He was not a party to any of the proceedings below and is not properly a Respondent before this Court. In addition, Mark L. and Sarah C. Burenheide, although not designated as Respondents in this matter and not parties below, are the adoptive parents with whom the baby has lived since shortly after her birth in December of 2000.

Catholic Charities, Inc., is a non-governmental corporation pursuant to United States Supreme Court Rule 29.6. It is a not-for-profit corporation organized under § 501(c)(3) of the Internal Revenue Code.

TABLE OF CONTENTS

	Page
Parties to the Proceeding and Statement Pursuant to Rule 29.6	i
Table of Contents	ii
Table of Cited Authorities	iv
Reasons for Denying the Writ	1
I. Petitioner Has Misstated The Facts Of This Case	1
II. The Trial Court And The Kansas Court Of Appeals Applied The Proper Legal Standard In Analyzing Petitioner's Highly Fact-Intensive Challenge	5
III. The Kansas Adoption And Relinquishment Act Is Constitutional	8
A. The Rational Basis Test Applies	9
B. The Kansas Act Does Not Violate Petitioner's Right to Due Process	10
C. The Kansas Act Does Not Violate Petitioner's Right to Equal Protection	11

Contents

	Page
1. Petitioner's Reliance on Kansas Laws Pertaining to Drunk Driving and Consumer Protection is Misplaced	12
2. Petitioner's Reliance on Anecdotal Evidence Relating to The Alleged Incompetence of Another Kansas Birth Mother is Misplaced	14
3. Petitioner's Reliance on the Protections Allegedly Afforded by Other States' Adoption Statutes is Misplaced	15
Conclusion	17

TABLE OF CITED AUTHORITIES

Page

Cases:

Bernardi v. Steve B.D., 723 P.2d 829 (Idaho 1986) ... 16

Craig v. Boren, 429 U.S. 190 (1976) 9

In re Adoption of A.S.S., 21 Kan. App. 2d 714, 907 P.2d 913 (1995) 13, 14

In re Adoption of Baby Girl T, 28 Kan. App. 2d 712, 21 P.3d 581 (2001), *rev. denied*, 2001 Kan. LEXIS 422 (2001), *cert. denied*, 534 U.S. 976 (2001) 6-7, 11, 17

In re Adoption of Baby Boy Irons, 235 Kan. 540, 684 P.2d 332 (1984) 7, 13, 14

In re Adoption of J.G., 10 Kan. App. 2d 483, 702 P.2d 1385 (1985) 7

In re Adoption of J.H.G., 254 Kan. 780, 869 P.2d 640 (1994) 6, 16

In re Adoption of Trent, 229 Kan. 224, 624 P.2d 433 (1981) 6

Lehr v. Robertson, 463 U.S. 248 (1983) 10

McGowan v. Maryland, 366 U.S. 420 (1961) 8, 9, 13

Mills v. Habluetzel, 456 U.S. 91 (1982) 8

Cited Authorities

	Page
Ortega v. IBP, Inc., 255 Kan. 513, 874 P.2d 1188 (1994)	6
Ross v. Moffitt, 417 U.S. 600, 609 (1974)	12
Santosky v. Kramer, 455 U.S. 745 (1982)	11
Treiber v. Stong, 5 Kan. App. 2d 392, 617 P.2d 114 (1980), *rev. denied*, 228 Kan. 807 (1980)	6, 13
Troxel v. Granville, 530 U.S. 57 (2000)	9, 11
United States Constitution:	
Fourteenth Amendment	11
Statutes:	
K.S.A. 59-2102	7
K.S.A. 59- 2111, *et seq.*	1
K.S.A. 59-2114	7
K.S.A. 59-2114(a)	5
K.S.A. 59-2116	16
K.S.A. 59-2124	5

Cited Authorities

	Page
K.S.A. 59-2124(a)	5, 6
K.S.A. 59-2124(d)	5
Internal Revenue Code § 501(c)(3)	i
Idaho Code § 16-1504	16
Indiana Code § 31-19-9-2	16
Indiana Code § 31-19-10-310-3	16
New York CLS Domestic Relations Law § 115-b	16
North Dakota Century Code § 14-15-07	16
North Dakota Century Code § 14-15-08	16
Oklahoma St. § 7503-2.2	16
Oklahoma St. § 7503-2.7	16
Oregon Revised Statutes § 109.312	16
South Carolina Code § 20-7-1700	16
Wyoming Stat. § 1-22-109	16
Rule:	
United States Supreme Court Rule 10	8

REASONS FOR DENYING THE WRIT

The first question presented by the Petition is whether the trial court and the Kansas Court of Appeals applied the correct legal standard in deciding that Petitioner freely and voluntarily relinquished her parental rights and in affirming that judgment. The second question is whether the Kansas Court of Appeals properly found the Kansas Adoption and Relinquishment Act, K.S.A. 59-2111, *et seq.* to be constitutional. The Petition should be denied because the trial court and Kansas Court of Appeals applied the correct legal standard in reviewing Petitioner's attempt to revoke her relinquishment of parental rights and, in any event, the standard utilized was more favorable to Petitioner than is the standard she advocates. In addition, the Kansas Adoption and Relinquishment Act is constitutional and constitutes legislation properly within the authority of the State of Kansas and particularly inappropriate for federal oversight.

I.

PETITIONER HAS MISSTATED THE FACTS OF THIS CASE

Petitioner would have this Honorable Court believe that Respondent devised a scheme to steal her baby away from her and place the child for adoption. During trial, Petitioner attempted to prove that she was impaired by drugs at the time she relinquished her parental rights. The trial court not only rejected Petitioner's claims but found that her consent was freely and voluntarily given and that her challenge to its validity came only as the result of a change of heart.

At the time of her unplanned pregnancy, Petitioner was 29 years old and held a doctorate degree in pharmacy. She was already an unmarried mother raising a child and was seeking to establish a permanent relationship with that child's father. The birth father of Petitioner's son was not the same man who impregnated her in 2000 and he was unwilling to raise another man's child. Petitioner first contacted Respondent in May of 2000, shortly after learning she was pregnant. She requested information about adoption and parenting and Respondent's counselor provided this information to her.

In August of 2000, Petitioner executed a form with Respondent indicating her desire to develop an adoption plan, although the baby was not due until December. Also in August, Petitioner began speaking with prospective adoptive parents who were related to one of her friends, whom she had previously met and who were not clients of Respondent. Although Petitioner presented herself as definite in her adoption plan, both Respondent and the prospective adoptive parents encouraged her to consider other adoptive parents before moving forward. R. Vol. 8, p. 86; R. Vol. 7, pp. 107-108; R. Vol. 4, pp. 33-34. On August 28, 2000, after again being provided with a list of her options, Petitioner formally indicated her wish to place her baby for adoption through Respondent and to place the baby with the adoptive parents she had independently selected. Stipulation 15.

In September of 2000, approximately three months before the baby was due, Respondent's counselor gave Petitioner a copy of the legal adoption papers to take home and review. Nine days later, Petitioner met with an attorney who explained the legal effect of signing a relinquishment of parental rights in Kansas. Petitioner was advised that if

she relinquished her parental rights to Respondent, she could not change her mind later and revoke her action. She was also informed that under Kansas law, she need not be present in court when the adoption was finalized.

Petitioner's baby was born at 7:38 p.m. on December 20, 2000. She executed a relinquishment on December 22, 2000 at approximately 3:55 p.m., roughly 44 hours later. Stipulation 20 and 22; Appendix A at p. 42. The birth was uncomplicated and the baby was delivered vaginally. Stipulation 20; Appendix A at p. 37; Appendix B at p. 53. Following delivery, Petitioner took declining doses of Percocet. The last single pill she took before she signed the relinquishment was given at 11:55 a.m., exactly four hours before she executed the relinquishment. Appendix B at p. 53.

At the time she executed the relinquishment, none of the treating physicians, nurses, social workers or members of her support group detected any impairment of Petitioner's ability to understand what was occurring or to make decisions. Prior to signing the relinquishment, Respondent's counselor met with Petitioner and Petitioner articulated the factors involved in keeping the baby or placing her for adoption. Appendix B at pp. 51-53; R. Vol. 7, pp. 98-99; R. Vol. 8, pp. 65-68; R. Vol 5, p. 89. Petitioner indicated she was prepared to execute the relinquishment and never indicated she was not going to sign. Appendix B at p. 52; R. Vol. 5, p. 93. Before executing the relinquishment, Petitioner signed six other legal documents relating to herself and her infant. Appendix B at p. 52; R. Vol. 8, pp. 9-11.

Respondent's counselor then read key portions of the relinquishment to Petitioner and explained that the document

was important and involved giving up parental rights. R. Vol. 7, pp. 30-36; R. Vol. 8, pp. 11-13. Petitioner read the relinquishment herself and was able to explain that she understood it was permanent and that she was relinquishing her rights to the child. Appendix B at p. 52; R. Vol. 7, pp. 33 -36; R. Vol. 5, pp. 92. The notary public who was present for execution of the relinquishment asked Petitioner to swear that it was truthful, both before and after she signed the document. Appendix B at p. 52; Stipulation 22. Petitioner testified, "I knew that that paper meant that the adoption process was starting, that allowed the child to go home with [the adoptive parents]." R. Vol. 3, p. 68.

Petitioner was discharged from the hospital after signing the relinquishment. On the morning of December 23, 2000, Petitioner sent gifts for the baby to the adoptive parents. Late in the evening of December 23, 2000, Petitioner contacted Respondent and then the adoptive parents, indicating that she wanted the baby back and that she was doing "terrible." Appendix B at p. 54; Stipulation 29. Petitioner solicited the birth father's support but he allowed his parental rights to be terminated. Petitioner filed a Petition to Set Aside Relinquishment following termination of the birth father's parental rights on January 29, 2001. R. Vol. 1, pp. 12-14, 17-19. Following a trial, the district court found that Petitioner failed to meet her burden of proof and that the evidence presented established that she "signed the relinquishment on December 22, 2000, freely, voluntarily and with full knowledge of its effect which terminated her rights to her child." Appendix B at p. 55.

The Kansas Court of Appeals affirmed the trial court and rejected Petitioner's newly raised constitutional challenges as being factually and legally unsupported. Appendix A. The Kansas Supreme Court denied review on June 13, 2002.

II.

THE TRIAL COURT AND THE KANSAS COURT OF APPEALS APPLIED THE PROPER LEGAL STANDARD IN ANALYZING PETITIONER'S HIGHLY FACT-INTENSIVE CHALLENGE

Petitioner contends that the trial court and the Kansas Court of Appeals applied the wrong legal standard in considering her challenge. She argues that a relinquishment executed pursuant to K.S.A. 59-2124(a) must be accepted by the agency in writing in order to be effective. (Pet. for Review at p. 2.) Because Respondent's agent executed the relinquishment 11 days after Petitioner attempted to revoke it, Petitioner reasons that she was entitled to return of the child. According to Petitioner, the Kansas Court of Appeals erred by misinterpreting the law and confusing the legal requirements regarding consents and relinquishments. (Pet. for Review at pp. 1, 4.) It is Petitioner, however, whose legal analysis is in error.

It is true that the Kansas Adoption and Relinquishment Act recognizes a distinction between a consent and a relinquishment. Pursuant to K.S.A. 59-2124, the relinquishment statute, once a parent has relinquished a child to an agency, the agency possess all the rights of a legal guardian and can place the child for adoption and give its consent thereto. K.S.A. 59-2124(a). The rights of the parent, on the other hand, are terminated, including the right to receive notice of a subsequent adoption proceeding. K.S.A. 59-2124(d). A relinquishment not accepted by the agency is the same as a consent.

A consent is final when executed, unless the consenting parent, prior to the final decree of adoption, alleges and proves by clear and convincing evidence that the consent

was not freely and voluntarily given. K.S.A. 59-2114(a). Under Kansas law, "clear and convincing" evidence relates to the quality of evidence presented, not the quantity. *See Ortega v. IBP, Inc.*, 255 Kan. 513, 523, 874 P.2d 1188 (1994). When a consent to adoption is properly acknowledged, the acknowledgment serves as *prima facie* proof of the validity of the consent, identity of the signor and that the written consent was freely and voluntarily given. *In re Adoption of Trent*, 229 Kan. 224, 624 P.2d 433 (1981). Absent fraud or duress, a consent constitutes a final waiver of parental rights. *In re Adoption of J.H.G.*, 254 Kan. 780, 869 P.2d 640 (1994). Under Kansas law, a valid consent to an adoption is a contract with the adoptive parents that the birth parent agrees to the termination of parental rights when the adoption is finalized. *Treiber v. Stong*, 5 Kan. App. 2d 392, 617 P.2d 114 (1980), *rev. denied*, 228 Kan. 807 (1980).

Because the trial court and Kansas Court of Appeals analyzed Petitioner's challenge to the validity of the relinquishment under the standard applicable to consents, Petitioner was afforded greater protection than had the relinquishment standard been utilized. She challenged the validity of her relinquishment and was given notice and the opportunity to present evidence at trial that her waiver of parental rights was not freely and voluntarily given. At the conclusion of the trial, the district court judge determined that Petitioner failed to meet her burden of demonstrating by clear and convincing evidence that her consent was not freely and voluntarily given. Appendix B at p. 55; Appendix A at p. 35.

On appeal, the Kansas Court of Appeals' role was to determine whether the findings of fact and conclusions of law below were supported by substantial competent evidence. *See In re Adoption of Baby Girl T*, 28 Kan. App. 2d 712, 717,

21 P.3d 581 (2001), *rev. denied*, 2001 Kan. LEXIS 422 (2001), *cert. denied*, 534 U.S. 976 (2001). The appellate court's function was not to reweigh the evidence or test the credibility of witnesses but to determine whether there was evidence supporting the trial court's findings. *In re Adoption of Baby Boy Irons*, 235 Kan. 540, 550, 684 P.2d 332 (1984); Appendix A at p. 37.

The Kansas Court of Appeals correctly found that Petitioner's attempt to revoke the relinquishment was ineffective. "A relinquishment is not an offer that can be revoked before it is accepted as in a commercial transaction." Appendix A at p. 40. To the contrary, the Kansas Adoption and Relinquishment Act does not require simultaneous execution by birth mother and agency. *Id.*

In a similar vein, the Kansas Adoption and Relinquishment Act abrogated a line of cases permitting birth parents who had executed consents and then changed their minds to "race to the courthouse" and withdraw the consents prior to the consents being filed. *E.g.*, *In re Adoption of J.G.*, 10 Kan. App. 2d 483, 485, 702 P.2d 1385 (1985) (invalidating biological father's consent to adoption where he revoked consent before it was filed with district court). *In re J.G.* was decided under K.S.A. 59-2102, which required a consent to be filed of record. That statute was repealed in favor of statutory provisions which focus the court's attention on the voluntariness of consent rather than on compliance with procedural technicalities. Under the current law, K.S.A. 59-2114, the only statutory basis upon which an otherwise valid relinquishment can be voided is to prove that it was not freely and voluntarily given. Petitioner failed to carry her burden in this case. Appendix A at p. 40.

Petitioner has not identified any compelling reasons warranting review by this Honorable Court. Certiorari is rarely granted where the lower courts' factual findings constitute the claimed error. United States Supreme Court Rule 10. Petitioner, whose challenge is highly fact intensive, has not alleged, and cannot demonstrate, error rising to the level necessitating this Court's review.

III.

THE KANSAS ADOPTION AND RELINQUISHMENT ACT IS CONSTITUTIONAL

Petitioner challenges the constitutionality of the Kansas Adoption and Relinquishment Act on both due process and equal protection grounds. As discussed more fully below, the Kansas Act at issue affects neither Petitioner's right to due process nor her right to equal protection. The Act is constitutional.

As a preliminary matter, Respondent notes that the constitutionality of the Act at issue is a question of law. *See, e.g., Mills v. Habluetzel*, 456 U.S. 91 (1982) (holding Texas statute requiring suits to establish paternity of unmarried fathers be brought before child's first birthday unconstitutional and a violation of equal protection). As such, the scope of this Honorable Court's review is unlimited. *Id.* Under the well-known rules of law governing this Court's consideration, the Kansas Adoption and Relinquishment Act is presumed constitutional and will be upheld unless no reasonable construction will bring it into conformity with the Constitution of the United States. *McGowan v. Maryland*, 366 U.S. 420, 426 (1961).

A. The Rational Basis Test Applies

In *McGowan*, this Honorable Court declared that the Fourteenth Amendment allows the various states wide discretion in enacting laws which affect some groups of citizens differently than others. 366 U.S. at 425. The constitution is offended "only if the classification rests on grounds wholly irrelevant to the achievement of the State objective." *Id.* This so-called rational basis test applies where the affected group is not entitled to some level of heightened scrutiny, on the basis of racial or gender classifications, for example. *See Craig v. Boren*, 429 U.S. 190, 197 (1976) (employing heightened scrutiny to gender-based distinction).

Heightened scrutiny has also been applied to legislation affecting fundamental rights. *E.g.*, *Troxel v. Granville*, 530 U.S. 57, 65 (2000) (applying heightened scrutiny to consideration of governmental interference with a parent's fundamental right to make decisions regarding care, custody and control of children, where parent was unwilling to relinquish parental rights). Such scrutiny, however, is not implicated in this matter. Petitioner's parental rights were terminated as a result of her own voluntary act, not because of any state action imposed upon her.

Moreover, the Kansas Adoption and Relinquishment Act passes constitutional muster even under heightened scrutiny. That standard asks whether the challenged legislation is substantially related to the achievement of an important governmental interest. *Craig*, 429 U.S. at 197. As the following sections demonstrate, the rights and restrictions provided by the Kansas Adoption and Relinquishment Act are substantially related to achieving Kansas' recognized public policy of stabilizing adoptions and protecting the rights of children and the expectations of prospective adoptive parents, once the adoption process has been initiated by the birth parent.

B. The Kansas Act Does Not Violate Petitioner's Right to Due Process

Petitioner claims the Kansas Adoption and Relinquishment Act violates her right to due process. It is unclear whether Petitioner's due process challenge is based upon a claimed lack of procedural due process or whether it is grounded in the theory that her substantive right to due process was violated. Either challenge must fail.

Petitioner received procedural due process because she was given notice and an opportunity to be heard prior to the termination of her parental rights. At the trial level, Respondent argued that Petitioner relinquished her rights to the child under Kansas law and therefore was not entitled to notice of the adoption proceeding. Respondent also objected to Petitioner's attempt to withdraw the relinquishment. The trial court, proceeding under the standards applicable to a consent for adoption under Kansas law, approved the notice Petitioner received and permitted her to challenge the validity of her waiver of parental rights. *See* Appendix A at p. 34. Thus, Petitioner arguably received more procedural process than she was due – but she certainly received no less. *Cf. Lehr v. Robertson*, 463 U.S. 248 (1983) (acknowledging that not all biological parents are entitled to notice of adoption proceedings and finding no due process violation where state law did not require notice to be given to biological father who failed to develop substantial relationship with child or to identify himself by registering with state's putative father registry).

Likewise, Petitioner's right to substantive due process was satisfied. It is true that the parent/child relationship is a fundamental liberty interest protected from state deprivation

by the Fourteenth Amendment to the United States Constitution. *Troxel*, 530 U.S. at 66-67; *In re Baby Girl T*, 28 Kan. App. 2d at 723. Unless a parent waives her rights, that liberty interest cannot be abrogated by the state absent a compelling interest. *See Santosky v. Kramer*, 455 U.S. 745, (1982); *In re Baby Girl T* at 723. "However, neither the Due Process nor the Equal Protection clauses prevent an individual from voluntarily relinquishing their legal rights and responsibilities to a child." *In re Baby Girl T* at 723. Petitioner's free and voluntary waiver of her parental rights and responsibilities does not implicate any liberty interest protected by the Fourteenth Amendment.

C. The Kansas Act Does Not Violate Petitioner's Right to Equal Protection

Petitioner claims that her right to equal protection was violated because: no scientific testing was utilized to determine and assure her competence at the time she executed the relinquishment documents but such methods are routinely employed in drunk driving cases; Kansas law does not give birth mothers a window of time in which to withdraw a voluntary waiver of parental rights but Kansas consumers have a "cooling off period" in which to cancel a door-to-door sales transaction; Petitioner has anecdotal evidence regarding another birth mother in Kansas whose child was returned to her when it was determined that her use of illicit drugs rendered her incompetent to freely and voluntarily relinquish her parental rights; and the adoption and relinquishment statutes of other states differ from the Kansas Act and allegedly afford birth mothers more protection than does Kansas. None of these allegations, even if accurate, raises equal protection concerns.

1. Petitioner's Reliance on Kansas Laws Pertaining to Drunk Driving and Consumer Protection is Misplaced

The cornerstone of equal protection analysis is that individuals who are similarly situated should receive the same treatment under the law. *Ross v. Moffitt*, 417 U.S. 600, 609 (1974). Equal protection is at issue where there is "disparity of treatment by a State between classes of individuals whose situations are arguably indistinguishable." *Id.* This basic tenet of equal protection analysis demonstrates that Petitioner's reliance on Kansas law regulating drunk driving and consumer transactions is misplaced. The questions Petitioner asks this Court to entertain are whether she should have been subjected to scientific testing to determine her competence and whether she should have been able to revoke her consent later, regardless of her competence at the time she relinquished her parental rights. Respondent respectfully states that equal protection under the law does not mandate either occurrence.

Petitioner does not allege that her status as a birth mother is in any way relevant to that of drivers suspected of being under the influence of drugs or consumers wishing to cancel a sales transaction. In any event, she would be unable to make such a connection. Simply put, these three types of legislation regulate different conduct by different people for different purposes. Kansas' interest in utilizing scientific testing methods to deter, prosecute and convict drunk drivers is vastly different from any pretended interest Petitioner can formulate for the State to inject itself into the private decision of a birth mother to place a child for adoption. The State's interest is to enforce only those consents that are freely and voluntarily executed, but if so executed, the stability of the

child becomes paramount. *See In re Adoption of A.S.S.*, 21 Kan. App. 2d 714, 719, 907 P.2d 913 (1995). In the case at bar, there is substantial competent evidence Petitioner was competent at the time she relinquished her parental rights. Equal protection does not require the blanket imposition of competency, sanity and/or drug testing in the adoption arena.

Likewise, Kansas' interest in providing consumers a "cooling off" period to cancel a door-to-door sales transactions is irrelevant to its interest in regulating adoption. Although Petitioner's decision to place her child for adoption is undeniably a more important decision than whether to purchase goods from a door-to-door salesman, it is undisputed that Petitioner had months in which to make her decision. She decided to place her child for adoption, received and reviewed copies of the legal forms, consulted with an attorney and independently selected the adoptive parents long before her delivery date. She did not sign the relinquishment until almost 44 hours after the baby was born and could have waited longer or decided against signing at all if she had elected to do so. The fact is that Petitioner was not asked to make her mind up "on the spot," nor did she do so.

In order to pass constitutional muster, the Kansas Adoption and Relinquishment Act must be reasonably related to a legitimate governmental objective. *McGowan v. Maryland*, 366 U.S. 420, 425 (1961). The recognized objective and "strong public policy" behind the Kansas statutory scheme is to stabilize adoptions and prevent revocation of consent on a mere whim. *In re Irons*, 235 Kan. at 547. The Act provides rules guiding the conduct of the birth parent and adoptive parents as to when, and under what circumstances, a consent can be revoked. *Treiber*, 5 Kan. App. 2d at 396. In that way, the legitimate interest of the State of

Kansas in promoting stability for children is protected. *In re Irons*, 235 Kan. at 552. Under Kansas law, once a valid consent or relinquishment is executed, the rights of the child to stability and permanence take precedence over those of the birth mother. *See In re Adoption of A.S.S.*, 21 Kan. App. 2d 714, 719, 907 P.2d 913 (1995).

2. Petitioner's Reliance on Anecdotal Evidence Relating to The Alleged Incompetence of Another Kansas Birth Mother is Misplaced

Petitioner also offers an equal protection challenge based upon anecdotal evidence that a Kansas birth mother who used illicit drugs successfully challenged the validity of her consent to adoption. Respondent respectfully states that such information is inherently untrustworthy. In the absence of reported case law, this Court is being asked to accept Petitioner's recitation of the facts and her analysis that the situation is similar to her own. Even if the facts Petitioner offers are assumed to be accurate, she has made no showing that her right to equal protection has been impaired.

Apparently, the birth mother who used illicit drugs was able to prove by clear and convincing evidence that she was incompetent at the time she relinquished her parental rights. In contrast, Petitioner was unable to make this showing. Her failure came despite testifying as an expert pharmacist herself and producing another expert who rendered opinions regarding the effect of the medication on Petitioner's ability to validly consent to the adoption. The Kansas Court of Appeals found substantial competent evidence to support the trial court's factual findings that the birth was uncomplicated; Petitioner's last dose of medication was several hours before signing the relinquishment; and that Petitioner, who executed

the documents approximately 44 hours after giving birth, was competent and understood the consequences of her actions. At trial, these facts were more persuasive to the fact finder than Petitioner's unsubstantiated allegation that the medication rendered her incompetent.

3. Petitioner's Reliance on the Protections Allegedly Afforded by Other States' Adoption Statutes is Misplaced

Petitioner also discusses the protections allegedly afforded by the adoption laws of other states. Her argument is seemingly that the Kansas Adoption and Relinquishment Act violates equal protection because, as a Kansas birth mother attempting to revoke her consent to adoption, she is treated differently than are birth mothers in other states.

Even assuming, *arguendo*, that Petitioner is correct in her contention that the laws of some other states are more favorable to her situation than is Kansas law, she has not enunciated a valid equal protection claim. Merely identifying some differences among statutes of various states does not raise a constitutional issue. The salient question under equal protection analysis is whether Petitioner was discriminated against *vis a vis* other similarly situated residents of Kansas – not whether other states provide different statutory protections to their residents. Equal protection is violated if the State of Kansas impermissibly discriminates among different classes of people within its own boundaries.

The real question springing from the fact that states impose different laws regulating adoption is whether the state law in question (i.*e.*, Kansas law) meets the minimum standards required by the United States Constitution. The answer in this case is unequivocally that it does.

Moreover, the premise underlying Petitioner's analysis is faulty. She challenges the Kansas Act, in part, on the basis that some other states require more than 12 hours to elapse following the delivery of a baby before a birth mother can validly consent to placing the child for adoption.[1] Kansas' 12 hour provision was enacted to promote the State's interest in stabilizing adoptions for children while protecting birth mothers. *In re J.H.G.*, 254 Kan. at 789-790. Prior to enacting the 12 hour requirement, Kansas law did not mandate any waiting period at all. The legislative history demonstrates that the Kansas legislature considered but rejected a 24 hour waiting period. *Id.* Kansas law does not require a consent to be executed 12 hours after birth – it simply permits it. K.S.A. 59-2116. As Petitioner executed her relinquishment almost

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1. Respondent notes that Kansas law afforded Petitioner greater protection than she would have enjoyed in at least seven other states, which mandate no waiting period and require a high standard of proof to invalidate an adoption consent or relinquishment: **Idaho** Code § 16-1504 (no waiting period by implication; fraud, duress or undue influence required to revoke consent. *See Bernardi v. Steve B.D.*, 723 P.2d 829 (Idaho 1986)); **Indiana** Code § 31-19-9-2 and § 31-19-10-310-3 (permitting consent any time after birth and providing "best interest" of child test for revoking consent); **New York** CLS Domestic Relations Law § 115-b (no waiting period by implication and "best interest" of child test applied to revocation); **North Dakota** Century Code § 14-15-07 and § 14-15-08 (permitting consent any time after birth and allowing withdrawal of consent only upon showing of "best interest" of child); **Oklahoma** St. § 7503-2.2 and § 7503-2.7 (permitting consent any time after birth and requiring clear and convincing evidence of fraud or duress for revocation); **Oregon** Revised Statutes § 109.312 (no waiting period by implication and allowing irrevocable consent); **South Carolina** Code § 20-7-1700 (permitting consent any time after birth and requiring both "best interest" of child and finding of duress/coercion of birth mother); and **Wyoming** Stat. § 1-22-109 (permitting consent any time after birth and requiring showing of fraud or duress to invalidate consent).

44 hours after giving birth, the 12 hour issue is clearly a red herring. This Honorable Court has already denied review on this issue in *In re Baby Girl T*, cited *supra*, a case where the constitutionality of the 12 hour provision was directly at issue.

CONCLUSION

For all of the foregoing reasons, Respondent respectfully requests that this Honorable Court deny the Petition.

Respectfully submitted,

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(3)

MAR 2 4 2003

OFFICE OF THE

No. 02-1108

IN THE

SUPREME COURT OF THE UNITED STATES

Deanna C. Willson-PETITIONER

V.

Catholic Charities Adoption Agency and M. Bauer
appellees-Respondents

ON PETITION FOR A WRIT OF CERTIORARI TO
KANSAS COURT OF APPEALS

REPLY BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

Deanna C. Willson
615 N. Pershing
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9 pp

INTRODUCTION

Federal oversight is strongly needed for the State of Kansas. Evidence of abuse has prompted the UN to form a special 1503 committee addressing these cases. Several cases from the State of Ks alone are being looked into and abuse has been acknowledged. My daughter was withheld from me illegally and my signature was pressured while I still have several doses of powerful narcotics in my system. There is **case law**, which is identical to my situation regarding the relinquishment not being valid, and all levels of the Courts in Kansas have ignored this. As shown to you by Martin Bauer in his response brief on page 16, several states will not accept the provision of fraud and coercion as justification for returning a child to his/her natural parent. Adoption is the only area of law where the courts have seen it fit to legalize fraud. The failure of the Kansas Courts to address this suggests that Kansas has the right to exclude mothers only considering adoption from the exercise of fundamental rights simply to appease the self-serving interests of adoption attorneys, agencies, and prospective adoptive parents who have no rights to begin with. This has led to the abuses that are evident in this case as well as a countless number of other cases. Furthermore, most of these mothers are denied due process simply

because they do not have the financial resources or influence in the judicial system. The game to obtain a perfect newborn, not an orphan that needs a home, has become a fine oiled profitable machine by coercion and fraud protected by the State of Kansas. Disciplinary measures for abuse have become futile due to the Disciplinary Administrator being the brother of the President of the Academy of Adoption Attorneys. Federal oversight is long overdue for families and children's lives are being hurt and destroyed by forcing unnecessary, unethical, and illegal adoptions.

There was a definite scheme to keep a copy of the relinquishment away from me so that I could not see that the form was invalid. It was invalid for 12 days. This evidence was stated in testimony by the social worker who said upon advice of Mr. Bauer, "....do not give her a copy...." even though the form on top says that I was entitled to receive a copy of it.

Drug Issue

Clearly the Federal government must intervene when ignorance of drug metabolism fosters and excuses tactics pressuring relinquishments while a mother still has powerful narcotics in her system. Respondent obviously has repeatedly shown lack of comprehension about the pharmacokinetics of drugs. The Lower Court in this case clearly showed lack of concern, common sense, and clear bias to the other party in its failure and refusal to acknowledge how unethical, irresponsible, cruel, and coercive it is to obtain an extrajudicial irrevocable, liberty-protected interest from a mother merely considering adoption

while she is under the influence. This horrible tactic only serves the interest of the agency and adoptive parents who are desperate for the perfect newborn. In ***re adoption of Baby Girl T.,*** the Ks Appellate Court page 8 stated, "We conclude the legislature wanted to protect birth mothers from being coerced into signing a consent while under the influence of pain or pain-inhibiting medication, while balancing the need for permanency in the legal status of the child". Note when my case went to them a year later, I was discriminated against. This proves not only does the legislature show ignorance of drug pharmacokinetics. but the Courts as well. It is firmly established that a waiver of constitutional rights must be voluntarily, knowingly and intelligently made, and this should be no less true for relinquishment of parental rights than for any other liberty right (see, Johnson v. Zerbist, 304 U.S. 458; Matter of Male Infant L., 61 N.Y. 2d 420, 427; Matter of Daniel C., 99AD2d 35, 67.) Hence, to under the influence of narcotics is not free, voluntary, or final. Furthermore, I can provide the name of the woman who was given her baby back in Topeka because she was on medication.

Fentanyl was the drug used in my epidural, which is 50-100 times more powerful than Morphine. Its half-life is between 2-4 hours which means that half of the drug concentration is still in the system at 10 to 20 hours later. Then oral Percocet, a Schedule 2 powerful narcotic that must be locked up in a safe, was given on top of that. Each dose of Percocet duration of action lasts 4-6 hours. Then it would take 5 times that to be reduced to half of the concentration. This dose plus the 9 other doses were still in my system. How

can a waiver of constitutional right be intelligently made while in a drugged state of mind? Even the social workers notes state that I was undecided even in the hospital. The Kansas Adoption Act clearly does not protect the mother, but to the contrary helps lock in the irrevocable signature as soon as 12 hours. Even though the respondent notes that my signature was obtained 44 hours later, that was because I did not want to sign and the social workers told me I had to while in the hospital. They discouraged parenting as was stated in testimony by Dana Soetaert. Respondent also misstates that there were no witnesses to impairment. However, in the transcripts there are several obvious instances made by Dana Soetaert and another witness. Dana Soetaert also noted I reported blurry vision from the drugs.

Respondent again errors in stating provable fact when he states that I retained an attorney on January 29, 2001. I sought an attorney on December 26, 2000, long before the form was even valid. My attorney did not receive a copy of the relinquishment until February 2001 before the hearing in March 2001 and after requesting it.

The Kansas Courts Did Not Apply But Ignored The Proper Legal Standard Case Law supports my exact issue of not being legal without being accepting by the agency in ***Baby Boy N.*** and ***Wilson V. Children's Home.*** The other side had no case law to go by. These cases are identical to mine and I was discriminated against.

K.S.A. 59-2114 makes a mother prove her state

of mind while on potent intoxicating drugs. Federal intervention is needed to outlaw this. There is no protection for the birthmother in Kansas. Adoptive parents and the agencies and attorneys who abuse the system have greater protection.

Rational Basis

The Ks Adoption and Relinquishment Act does not pass constitutional muster. The standard achieves interest of not the state, but the mere hopeful, expectful prospective parents, which is completely in opposition of what this court stands for, which is family preservation. The best interest of the child is to remain with the only mother it has known for nine months.

Equal Treatment of the Constitution

I claim my right to equal protection was violated because case law supports me, ***Baby Boy N, Wilson v. Children's Home***. These cases are indentical to my situation and should have applied to my case as well. Respondent states that the 12-hour law was enacted to protect the birthmothers. In Baby T. the court said it was to prevent the mother from signing while under the influence of pain-inhibiting drugs. However, in my case I was not given any protection from this. I find the act in total opposition from what this Superior Court believes and what ethical adoption practices do.

Quite backwards to say that a child is better off 24 hours after leaving her mother with strangers that the mother the baby has known for nine months and who will in the future see the injustice of what

happened to separate what nature has created. The Lower Court of Ks also showed discrimination when I was denied visitation before the hearing in March, while the prospective adoptive parents held on to her. This alone was discrimination by the Lower Court judge. By denying me visitation as this was to be a completely open adoption with pictures and visits (I have not seen my daughter since birth), I was not treated as a parent who had never given a final consent, but as if I had fully understood what I was doing. The appropriate remedy was to declare the relinquishment a nullity ab initio and to return the status quo ante. To do anything less is to subject me to an on-going deprivation of due process law. (see, Matter of Unnamed Baby Boy, supra). The judge in the Lower Court showed bias there. Also I was discriminated against because Catholic Charities was allowed to not follow the law for about 12 days, in which the law specifically states that to be valid it must be accepted in writing. Because the Executive director was on vacation was no excuse to break the law and not be held accountable. Evidence throughout the testimony proved I was never definite on adoption, which was even stated by the Lower Court judge. This is an example of extreme misstatement of the facts.

Respondent keeps stating that the birth was uncomplicated, however fails to state that the doctor diagnosed me with maternal exhaustion during labor, which necessitated the baby being taken via vacuum extraction. Yes, the birth was successful (uncomplicated) but the status of myself was not. I also experienced second degree tearing which created my need for strong painkillers as well as the birth. The

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respondent has erred in interpreting the medical terms as well as any competency in childbirth.

Adoption is now a multi-billion dollar industry, which supplies babies for paying couples. This is the branch of adoption that is corrupt, coercive, and is getting worse. Because so many mothers in Kansas have been abused through the Kansas Adoption Act, please step in and render it illegal to take a consent while the mother is still on potent narcotics. Furthermore, strike out that Social Workers and Attorneys can act as judges taking a consent or relinquishment in the hospital while a mother still has narcotics in her system. Most states have a 72-hour waiting period and or have a brief revocation period because of the duress, pressure and coercion that goes on. Also recognize the severe abuse of Adoption practices in Kansas. It is so bad that I was sent a threatening letter by the attorney, which I filed with the police department. They were convinced as well which necessitated them calling the attorney and telling him not to contact me since I did not have an attorney.

Lastly, but very insignificant, Respondent points out that the couple was not Wichita client of Catholic Charities, but they were clients of Catholic Social Services in Topeka. Their file was transferred to Wichita early on and they did become their clients.

Conclusion

This Honorable Court should grant this petition and directly address the application of the Equal Protection Clause regarding the relinquishment as well

and the Adoption Act of Kansas which allows pressuring of relinquishment under the influence of narcotics

Respectfully Submitted,

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